Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-1605

RICHARD NIXON,

Appellant,

v.

ADMINISTRATOR OF GENERAL SERVICES, *et al.*,

Appellees,

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, *et al.*,

JACK ANDERSON, LILLIAN HELLMAN, *et al.*,

Intervenor-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPENDIX
[Volume II – Pages 357-714]

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PROBABLE JURISDICTION NOTED NOVEMBER 29, 1976

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Notes:

The Opinion of the lower court is printed at 408 F. Supp. 321, and is found in Appendix A to Appellant's Jurisdictional Statement, pp. 1a-106a.

The Order of the lower court is found in Appendix B to Appellant's Jurisdictional Statement, pp. 107a-108a.

The Presidential Recordings and Materials Preservation Act, Pub. Law 93-526, 88 Stat. 1695, 44 U.S.C. §2107 note, 3315-24, is found in Appendix D to Appellant's Jurisdictional Statement, pp. 107a-123a.

9. *Literary Property Rights:*

There are hereby assigned to the United States all of the literary property rights of Herbert Hoover in all his papers which may be transferred to the United States in accordance with the terms and conditions herein expressed, except that there is reserved to Herbert Hoover and his heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that he or they have written or may hereafter write for publication. The foregoing reservation includes the right to lic ase any publisher of such material.

EXHIBIT B

THE WHITE HOUSE
Washington

January 17, 1953

My dear Mr. Larson:

As I am sure you are aware, it is my earnest desire that my personal papers be preserved and ultimately made available for historical research. You are also familiar with the project to raise funds by private subscription for the construction of a library at Grandview, Missouri, to serve as a depository for these and other papers and documentary materials deemed to be of potential interest to scholars. It is the intent of the sponsors of the project to present the library building and grounds to the United States if the Congress by appropriate legislation will accept the property and provide for its maintenance and operation. It would be my wish upon consummation of such an arrangement that title to my papers deposited in the library pass to the United States and the papers themselves become a part of the National Archives.

I therefore propose, as a preliminary step toward such a disposition, to offer my personal papers for deposit in the National Archives pursuant to the provisions of section 507(e) of the Federal Records Act of 1950.

Members of my staff have been discussing with representatives of your Administration certain problems in connection with the custody, storage, and review of the papers pending the completion of the library project and the making of a definitive offer to deposit. I am advised that the plans outlined herein are in accord with the conclusions reached at these conferences.

My personal papers consist mainly, of course, of those accumulated by me during my tenure as President of the United States, but there are some which I acquired while Vice President and Senator, and others which relate to earlier periods in my life.

I propose to retain all of these in my personal possession when I leave office, and to move them to a secure place of storage under guard in Kansas City, Missouri. There I intend to review them and prepare them for ultimate deposit under section 507(e) of the Records Acts. I am requesting you to designate two or three experienced archivists to work with me on this project. I should expect to be consulted regarding the particular individuals to be assigned to the work.

It is my understanding that you have the authority to detail personnel to review or assist in the review of the papers, preliminary to and in connection with a proposed offer for deposit under the provisions of section 507(e) of the Records Act, and that this power is derived from the provision of section 507(a)(3) of the same Act authorizing you "to direct and effect the transfer of materials from private sources authorized to be received by the Administrator by the provisions of subsection (e) of this section."

As has been indicated, this letter is not to be construed as a definitive offer for deposit within the meaning of section 507(e) of the Records Act, but only as a preliminary offer or proposal to deposit. It is my firm intention, however, to offer the great bulk of my personal papers for deposit under the cited section or under whatever similar provision is included in the acceptance legislation in the event that the proposed library at Grandview is constructed and is accepted by the Congress. Alternatively, if the project for construction of the library should be abandoned or fail of accomplishment within a reasonable time, I intend to make an offer for deposit under section 507(e), and to make appropriate provision therefor in my will.

It is not my purpose to pass title to any of my personal papers at this time by virtue of the proposals outlined herein nor to make any binding commitment as to just what papers will be offered for deposit. There will be some few papers which for sentimental reasons I may wish to give to relatives or friends. There will undoubtedly be in the files many papers having no historical value either because they are duplicated elsewhere in official records or because they were of purely transitory interest. Such items can be eliminated in the course of the reviews contemplated, so that the material deposited will not be unnecessarily volumious.

During the interval prior to deposit of the papers, I expect to be working on them and using them to refresh my recollection, consequently I wish to keep them available for my use in connection with my studies and any writing I may do.

Furthermore, I contemplate that when my offer for deposit is made I shall impose restrictions upon the use of certain of the papers for varying periods as may be authorized by law. Such restrictions have customarily

been imposed by my predecessors or their heirs in making deposits of Presidential papers.

I hope that satisfactory arrangements for the preservation and eventual deposit of my papers in the National Archives can be worked out along the lines indicated above.

Sincerely yours,
/s/Harry S. Truman

Honorable Jess Larson,
Administrator
General Services Administration
Washington, D.C.

EXHIBIT D

Harry S. Truman
Federal Reserve Bank Building
Kansas City O, Missouri

February 12, 1957

Honorable Franklin G. Floete
Administrator of General Service
General Services Administration
Washington 25, D.C.

Dear Mr. Floete:

As you know, it has long been my desire to give to the United States the papers accumulated during my years in public office and the other historical materials, mementos, objects of art and other memorabilia acquired by me as President during my term of office, to the end that the people may have those things available for study

and research, and for their enjoyment and education. In pursuit of this objective, a Library building has been constructed in the City of Independence, by public subscription, suitable for housing, preserving and exhibiting these papers and materials. This building is now nearing completion, and it is the intention of the Harry S. Truman Library, Inc., the non-profit corporation which has financed and erected it, to present it as a gift to the United States on certain conditions, and provided the United States will maintain, operate and protect it as a Presidential archival depository as provided in the Federal Property and Adminstrative Services Act of 1949 as amended (65 Stat. 695).

At this time, therefore, under the terms of the said statute, I offer my papers and other historical materials as hereinafter described to the United States on condition that they will be preserved and made available pursuant to restrictions imposed by me, and on condition that they be accepted by the United States on the terms and provisions hereinafter set forth.

1. I offer to the United States all my right, title and interest in my papers now stored in the Memorial Building on Maple Avenue and Pleasant Street in the City of Independence, Missouri. These include substantially all the papers which were in the files of the White House when I relinquished the office of President. They also include a number of other files accumulated by me in my public offices prior to that time, and are estimated to total several million documents.

2. I offer to the United States all my right, title and interest in my other papers relating to my public offices wherever located or stored, with the exception of certain papers determined by me, or in the event of my death by my executors or personal representatives, prior to the transfer therof, to be related in whole or in part to the

business or personal affairs of myself or my family (which term as used in this offer shall include my wife, mother, daughter, brother, sister, nephews or nieces).

3. I offer to the United States all the other historical materials collected during my tenure of public office now belonging to me which are located in Jackson County, Missouri, or elsewhere, other than in my private residence in the City of Independence, Missouri, and which shall not prior to the transfer thereof be marked, labelled or otherwise designated to show a reservation of title in me, or which shall not have been received for the business or personal use of myself or my family. The term "historical materials" as used in this offer shall bear the same meaning as defined in the Federal Property and Administrative Services Act of 1949 as amended (69 Stat. 695).

4. The offers contained in paragraphs 1, 2 and 3 hereof shall lapse and become ineffective unless within one year from the date hereof the United States shall accept the offer of the Harry S. Truman Library and the land surrounding said building now under construction in the City of Independence, Missouri, and shall agree to maintain and operate it at all times thereafter as a Presidential archival depository for the storage of the papers and the other historical materials included in such offers in accordance with the provisions of the Federal Property and Administrative Services Act of 1949 as amended.

5. Upon the acceptance and agreement mentioned in the preceding paragraph, the papers described in paragraph 1 will be transferred to the United States for storage in said building as soon as possible; and the papers and historical materials described in paragraphs 2 and 3 hereof shall be transferred from time to time as shall be agreed upon by the Administrator of the General Services Administration and me or my executors or representatives.

6. I or my executors or personal representatives shall be the sole judge of (a) which papers relate to my various public offices and which relate to the personal or business affairs of myself or my family, and (b) which of my other historical materials were received for the business or personal use of myself or my family.

7. All papers and other historical materials which shall be transferred pursuant to the foregoing to the United States shall be kept permanently in the said Harry S. Truman Library, after the United States shall have accepted and agreed to maintain it as set forth in paragraph 3, subject to the right of the Archivist of the United States in his discretion (a) to make temporary loans thereof to such persons, organizations or institutions as he shall determine, (b) to dispose by sale, exchange or otherwise of any such papers or historical materials which he may determine to have no permanent value or historical interest or to be surplus to the needs of the Harry S. Truman Library, and (c) to remove from the said Library any and all of such papers or historical materials if he shall deem it necessary to preserve them from threatened destruction.

8. All papers transferred by me or my representatives to the United States shall be freely accessible at all reasonable times to me or to persons designated by me in writing during my life or after my death to the persons designated by me in my will.

9. It is my purpose to make the papers and other historical materials referred to herein available for the purpose of study and research as soon as possible and to the fullest possible extent. However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidence is essential to the functioning of the constitutional office of the Presidency, it will be necessary to withhold

from public scrutiny certain papers and classes of papers for varying periods of time.

Therefore, for the time being, the following classes of papers shall be withheld from inspection by, and their contents shall be kept confidential and shall not be divulged to, anyone (including public officials) other than (1) regular employees of the National Archives and Record Service performing normal archival services on such papers under the general supervision of the Archivist of the United States, and (2) myself and persons authorized by me in my will or otherwise to have access to such papers on my behalf, pursuant to paragraph 8 hereof:

(a) Papers that are classified as to secrecy and security pursuant to law until such classification shall be removed. Such classification shall be reviewed from time to time; and

(b) Papers containing statements which may in any manner injure, embarrass or harass any living person or the living members of the family of any deceased person, or papers which may in any manner be prejudicial to the conduct of foreign relations with any government, or papers containing statements made by or to me in confidence in any official capacity.

10. Subject to my approval or the approval of the persons designated by me in my will or otherwise to act after my death with respect to these papers and historical materials, the employees of the National Archives and Record Service may perform the services necessary to the classification of the papers in accordance with the foregoing paragraph, and may place any withheld papers in special files where they shall be available only to me or to such persons or employees.

11. All papers withheld in accordance with the foregoing provisions shall be reexamined from time to time by employees of the National Archives and Records Service under the direction of the Archivist of the United States and, subject to approval by me or by persons designated by me in my will or otherwise to act after my death with respect to those papers and historical materials, shall be opened to general use as soon as the passage of this or other circumstances have removed the conditions that justify their being temporarily withheld.

12. All competent private persons interested in using the papers for purposes of serious scholarly research shall be granted equal access to the papers that are not withheld in accordance with the foregoing.

13. I hereby assign to the United States all my literary property rights in all papers which may be transferred to the United States in accordance with the terms and conditions herein expressed, except that I reserve to myself and my heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that I have written or may hereafter write for publication. The foregoing reservation includes the right to license any publisher of such material.

Sincerely yours,

/s/Harry S. Truman
Harry S. Truman

EXHIBIT F

THE WHITE HOUSE
Washington

April 13, 1960

Dear Mr. Floete:

The papers of a President, which from the time of George Washington have been regarded as the personal property of the President, have, inescapably, a direct and important association with the history of our country. Believing that they should be permanently and generally available for study, I desire that my papers should be made so available and believe that this can best be done through a Presidential archival depository, as provided by the Federal Property and Administrative Services Act of 1949, as amended.

The Eisenhower Presidential Library Commission, an agency of the State of Kansas, now has under construction in the City of Abilene a library building, financed by public subscription, where it is proposed to house my Presidential and other papers. This building is appropriately situated on land adjacent to my boyhood home and to a museum, both of which are maintained by the Eisenhower Foundation, a non-profit corporation organized under the laws of Kansas.

When the Library building has been completed, the Commission intends to present it, together with equipment and grounds, as a gift to the United States, on condition that the United States will maintain and operate this Library as a Presidential archival depository under the provisions of the above cited Act.

Therefore, in furtherance of this plan and in accordance with the provisions of that Act, I now offer as a gift to

the United States such of my papers and other documentary materials as are hereinafter described, on condition that these papers and materials will be accepted, preserved, and made available by the United States under the following terms:

1. Upon the close of my term in office, I shall cause to be transferred to the United States for deposit in the Library at Abilene the bulk of my papers in the White House office, estimated to include several million documents.

2. Other documents, still in my possession, including the remainder of my Presidential papers, the papers accumulated by me before my inauguration as President, and other documentary materials, including books, still pictures, motion pictures, and sound recordings, shall be transferred to the United States for deposit in said Library from time to time as shall be agreed upon by the Administrator of General Services or his representative and me or my representative, except those papers and other documentary materials which shall, before or after my leaving the Office of President, be determined by me or my representative to be excluded from this offer by reason of private or personal interest in such papers or materials on my part or on the part of a member of my family.

3. The offer of the papers and other materials described in paragraphs 1 and 2 hereof is conditioned upon acceptance by the United States of the offer of the land and buildings comprising the Eisenhower Library at Abilene, Kansas, and upon its agreement to maintain and operate the Library at all times thereafter as a Presidential archival depository for the storage of such papers and other materials, in accordance with the provisions of the Federal

Property and Administrative Services Act of 1949, as amended, such acceptance and agreement to be effected within 90 days after the end of the period described in the second proviso to section 507(f) (1) of said Act.

4. All papers and other documentary materials which shall be transferred to the United States pursuant to the foregoing shall be kept in the Library permanently, subject to the right of the Administrator of General Services in his discretion (a) to make temporary loans thereof to such persons, organizations, or institutions as he shall determine, (b) to dispose by sale, exchange, or otherwise of any such papers or documentary materials which the Archivist of the United States may determine to have no permanent or historical interest or to be surplus to the needs of said Library, and (c) to remove from said Library any or all such papers or documentary materials if he deems it necessary to preserve them from threatened destruction.

5. All papers and other documentary materials transferred to the United States pursuant to the foregoing shall be accessible at all reasonable times to me, my son, my representative, or to other persons authorized in writing by me or my son to have access to such papers.

6. It is my purpose to make the papers and other documentary materials donated to the United States by the terms of this instrument available for purposes of serious research as soon as possible and to the fullest extent possible. However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidences is essential to the functioning of the office of the Presidency, it will be necessary to

withhold from public scrutiny certain papers and classes of papers for varying periods of time. In pursuance of this objective and in accordance with the provisions of Section 507(f) (3) of the Federal Property and Administrative Services Act of 1949, as amended, conditions are imposed on the use of my papers as provided in paragraphs 7 through 10 immediately following.

7. Subsequent to the execution of this instrument, the Administrator of General Services shall have the papers that are transferred to the United States reviewed and shall place under seal the following classes of materials:

   a. Papers that are security-classified pursuant to law or Executive Order, until such classification shall be removed.

   b. Papers the use of which may be prejudicial to the maintenance of good relations with foreign nations.

   c. Papers containing statements made by or to me in confidence.

   d. Papers relating to my family or private business affairs, and papers relating to the families or private business affairs of persons who have had correspondence with me.

   e. Papers containing statements about individuals which might be used to injure or harass them or members of their families.

   f. Such other individual files as I, or my representative, or the Administrator of General Services may specify.

8. Papers placed under seal shall not be made available to anyone or their contents divulged to anyone

(including public officials) except (a) persons authorized under the terms of paragraph 5 above, and (b) officials and employees of the National Archives and Records Service when performing essential archival work processes on such papers under the supervision of the Administrator of General Services.

9. All papers placed under seal in accordance with the foregoing provisions shall be reexamined from time to time by officials and employees of the National Archives and Records Service under the direction of the Administrator of General Services and, subject to approval by me or my representative, shall be opened to research use as soon as the passage of time or other circumstances have removed the conditions that required that they be put under seal.

10. All competent private persons interested in using my papers for serious scholarly research shall be granted equal access to those that are not withheld from use according to the foregoing, subject to the regulations issued by the Administrator of General Services governing the use of papers and other documentary materials in the Library.

11. Title to my papers and other documentary materials and the literary property rights in my papers, shall pass to the United States as such papers and materials are transferred to the United States under the terms and conditions herein expressed, except that I reserve to myself and to my heirs (a) a right to make any use of any of these papers in writing for publication, and (b) literary property rights in any works that I have written or may hereafter write for publication. These reservations include the right to license any publisher of any such work.

12. My representative for purposes of paragraphs 2, 5, 7, 8 and 9 shall be such person or persons as I may

designate in a letter filed with the Administrator of General Services. In the event that at any time after my death there should be no representative so designated, my representative shall be my son John Eisenhower, or such person or persons as he may designate in the same manner.

The detailed conditions described in this letter have been drawn up in accordance with known precedents and with the cooperation of officials of your office and of the National Archives. Permit me to express my deep appreciation of the help that all these individuals have given me.

With personal regard,

Sincerely,

/s/Dwight D. Eisenhower

The Honorable Franklin Floete
Administrator of General Services
Washington, D.C.

EXHIBIT G

Honorable Bernard L. Boutin
Administrator of General Services
Washington, D.C. 20405

Dear Mr. Boutin:

FIRST: The late John Fitzgerald Kennedy had said many times both publicly and privately that it was his intention to place certain of his papers and other historical materials in a Presidential archival depository in Massachusetts, in the form of a Library bearing his name, and

had encouraged, and participated in, and arranged for the planning of such an institution.

SECOND: Accordingly, in fulfillment of such stated intention and arrangement, it is our desire to give and deliver to the United States of America for the purpose of ultimate deposit in the said Presidential archival depository in Massachusetts, the papers, documents, historical materials, mementos, objects of art, and other memorabilia, including books, motion pictures, still pictures and sound recordings, hereinafter called "Materials," formerly belonging to and relating to the life and work of John Fitzgerald Kennedy, and which he intended should be so deposited.

THIRD: Therefore, we, the undersigned Jacqueline Bouvier Kennedy and the Executors and Trustees of the estate of John Fitzgerald Kennedy, deceased, hereinafter called the "Donors," hereby convey, assign, give, and donate to the United States of America, hereinafter called the "Donee," effective as of November 22, 1963, and subject to the conditions and restrictions hereinafter set forth, all of our right, title, and interest to the Materials above described, hereinafter called "Materials," as our right, title, and interest may appear, including but not limited to those Materials now stored at the White House, the Executive Office Building, The National Archives Building, or at such other place or places where such Materials may be found, subject, however, to the specific understanding and agreement that:

(i) This gift and transfer shall not and is not intended to apply to or embrace such items as John Fitzgerald Kennedy had not intended to be deposited in said Presidential archival depository, or which are determined by the Donors to be of special or private interest to the personal, family and business affairs of John Fitzgerald Kennedy, his wife and children, parents, brothers and sisters.

(ii) The Donors shall have and specifically reserve the right to retain title and possession and to regain possession of any items that the Donors in their sole discretion may determine in accordance with this paragraph the Third are excluded from the purview of this gift, irrespective of the fact that such items may have been theretofore delivered to the Donee.

(iii) For the purposes of effectuating the provisions of subparagraphs (i) and (ii) of this paragraph the Third, the Donors shall have and specifically reserve the right to examine, at any time or from time to time prior to January 1, 1967, either themselves or through authorized representatives, any Materials from time to time in the possession or custody or under the control of the Donee, and wheresoever the same may be situated, for the purpose of determining and designating any such Materials as being excluded from the purview of this gift, provided, however, that examination of security-classified information shall be in accordance with applicable law or Executive Order relating to security-classified defense information.

(iv) The Donee shall, as soon as is reasonably possible, and upon written notice from the Donors of such designation, deliver to the Donors any items so designated by the Donors pursuant to subparagraph (iii) of this paragraph the Third as excluded from the purview of this gift.

(v) Mrs. Jacqueline Bouvier Kennedy shall have and specifically reserves the right to borrow from the Donee without formality such materials to which this transfer applies as she may wish for her personal use, examination, or display either by herself or by anyone she may select or approve, and any Material so borrowed shall be returned to the Donee within a reasonable period of time.

FOURTH: All Materials to which this transfer is applicable shall be maintained by the United States and stored at such place or places as may be designated by the Administrator of General Services until the completion and acceptance by the United States, pursuant to section 507(f) of the Federal Property and Administrative Services Act of 1949, as amended, of the proposed John F. Kennedy Library, at which time the Materials shall be deposited in that Library and administered in accordance with the pertinent provisions of that Act.

FIFTH: It is the Donors' wish that all Materials donated to the Donee hereunder be made available for research use as soon as possible and to the fullest extent possible. The Donors, however, desire to guard against the possibility of the Materials being used to injure, embarrass, or harass any person and otherwise properly to safeguard the interests of the United States. Therefore, all Materials to which this transfer applies are accepted and shall be held by the Donee subject to the following restrictions and conditions:

(i) The Donors shall have and hereby reserve the right to restrict the time and availability of any Materials to which this transfer applies, and irrespective of the time when such Materials may have been, or may be delivered to the Donee, for such time or times as the Donors in their sole discretion may from time to time or at any time specify, and such restrictions shall be adhered to and observed in all respects for as long a period as the Donors shall have specified or until such restrictions are revoked or terminated by the Donors or by persons legally qualified to act on their behalf with respect thereto. Any Materials so designated in writing by the Donors as restricted shall be known and are hereinafter referred to as "Donors' Restricted Material," and shall be placed under seal, it being

understood, of course, that Donor Restricted Materials shall be accessible to the Archivist of the United States or designated members of his staff for the performance of such archival work processes as may be requested by the Donors, but not otherwise.

(ii) The Archivist of the United States or designated members of his staff shall review the Materials to which this transfer is applicable, except Donors Restricted Material, for the purpose of classifying such Materials. Any Materials which fail within the following categories shall be designated by the Archivist and are hereinafter referred to as "Archivist Restricted Material," and shall be placed under seal:

(a) Materials containing statements which may in any manner be used to injure, embarrass, or harass any person, or Materials which may in any manner be prejudicial to the conduct of foreign relations of the United States of America, or materials containing statements made by or to John Fitzgerald Kennedy in confidence.

(b) Defense information that has been security-classified pursuant to law or Executive Order: *Provided that* such information may be declassified or otherwise made available in accordance with the procedures established by law or Executive Order governing availability of security-classified information.

(c) Materials that relate to the personal, family, and business affairs of John Fitzgerald Kennedy and his family, including such affairs of Mrs. Jacqueline Bouvier Kennedy, and the mother, father, sisters, and brothers of John Fitzgerald Kennedy.

(iii) The review and classification of the Materials hereinabove provided for shall be performed by and in

collaboration between the Donors or their designated representatives and the Administrator of General Services or his designatees and shall be completed within the shortest reasonable period of time after the Materials have been deposited in the John Fitzgerald Kennedy Library in Massachusetts.

(iv) Until such time as the review and classification of the Materials, as hereinabove provided for, has been completed, no person shall be permitted access thereto except the donors, persons given written authorization by the donors, and employees of the General Services Administration performing archival work processes on such Materials, provided, however, that access to Materials which are security-classified shall be in accordance with applicable law and Executive Order relating to security-classified defense information.

SIXTH: Except as otherwise provided herein, all Archivist Restricted Materials shall be available only to employees of the General Services Administration performing archival work processes on such Materials and to the Donors or other persons given written authorization by any of the Donors, provided, however, that access to Archivist Restricted Materials which are security-classified shall be in accordance with applicable law or Executive Order relating to security-classified defense information.

SEVENTH: The Archivist of the United States or his designated representative shall review from time to time Archivist Restricted Materials, and shall remove the restriction from such materials and make them available for research use as soon as the passage of time or other circumstances no longer require their being kept under restriction, provided, however, that notwithstanding anything otherwise or to the contrary in this instrument contained, no restrictions shall be removed in respect of

the materials described in Article *Fifth* ii(c) without the prior written consent of the donors.

EIGHTH: The Donors hereby assign to the United States of America all of their library property rights in all Materials, excluding Donors' Restricted Material during the period of restriction, except that the donors reserve to themselves (a) the right to make any use of such Materials and (b) all literary property rights in any manuscript or other writings that John Fitzgerald Kennedy wrote for publication, including the right to license the publication of such material.

NINTH: All competent persons interested in using the materials for purposes of serious research shall be granted equal access to unrestricted materials.

TENTH: As used herein, the word "Donors" shall mean Mrs. Jacqueline B. Kennedy, and the Executors of and the Trustees under the Last Will and Testament of John Fitzgerald Kennedy from time to time qualified and serving.

/s/Jacqueline B. Kennedy
Donor
/s/Jacqueline B. Kennedy
/s/Bob Kennedy
/s/Edward M. Kennedy
Donors

By virtue of section 507(e) of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397(e)), the foregoing gift of the papers and other historical materials of the late President John Fitzgerald Kennedy is accepted.

THE UNITED STATES OF AMERICA
Acting by and Through

Acting /s/Lawson B. Knott, Jr.
Administrator of General Services

Date: February 25, 1965

Burke Marshall
Old Orchard Road, Armonk, New York 16501

August 20, 1966

Dr. James B. Rhoads
Archivist of the United States
Eighth Street & Pennsylvania Ave., N.W.
Washington, D.C.

Dear Dr. Rhoads:

In accordance with our telephone conversation this morning, I am enclosing four copies of the Memorandum of Agreement concerning the procedures to be followed in classifying the papers of President Kennedy under Paragraph Fifth of the Deed of Gift of February 25, 1965. They have been signed by the Donors, and are ready for signature by the Administrator on behalf of the United States.

I would appreciate it if you would have three executed copies returned to me so that Mrs. John F. Kennedy, Senator Edward Kennedy and I can each have a fully executed copy for our files.

While I recognize that this Memorandum of Agreement is probably a public document under the appropriate statute, available for inspection upon request, I do not see any reason for a press release or other statement at this time or, for that matter, at any time prior to the opening of some papers for research, or at least the

opening of the Library. The substantive work all remains to be done. I am sure that you will agree.

We are all grateful for your cooperation and assistance in this matter.

Sincerely,

/s/ Burke Marshall

cc: Mrs. John F. Kennedy
Senator Edward M. Kennedy

Memorandum of Agreement

Paragraph Fifth of the deed of February 25, 1965, effecting the gift to the United States for deposit in the John Fitzgerald Kennedy Library of historical materials formerly belonging to John Fitzgerald Kennedy, provides that the Donors have the right to restrict the use and availability of any of the materials covered by the deed "for such time or times as the Donors in their sole discretion may from time to time or at any time specify". The same paragraph also enables the Archivist of the United States to classify certain types of materials as restricted, and to be placed under seal.

The work of classifying what materials should be restricted for what amount of time, and what materials should be made available for research use, is to be done in accordance with the following provisions:

> "The review and classification of the Materials hereinabove provided for shall be performed by and in collaboration between the Donors or their designated representatives and the Administrator of General Services or his delegatees and shall be completed within the shortest reasonable period of time after the Materials have been deposited in the John Fitzgerald Kennedy Library in Massachusetts."

It is agreed by the Donors and the Administrator of General Services that in view of the delay in the construction of the Library, it is desirable to establish procedures now to begin the "review and classification" prescribed by the deed so that suitable materials may be promptly made available for research use when the John Fitzgerald Kennedy Library has been completed.

As an appropriate means of implementing the collaboration between the Donors and the Donee required by the deed it is agreed that the Donors shall act through a Committee consisting of three persons, as follows:

Burke Marshall, Chairman
Justice Byron R. White
Dr. Herman Kahn

Successor representatives to these Committee members may be designated in writing to the Administrator from time to time by Mrs. John F. Kennedy and Senator Edward M. Kennedy, or the survivor of the two of them. In the event of the death or disability of both Mrs. John F. Kennedy and Senator Edward M. Kennedy, any such designation shall be made by the adult children of the late President John Fitzgerald Kennedy, or in the absense of any such children, by the late President's sisters, with the advice of other members of the family. Any Committee member designated hereunder will serve until a successor is designated.

The delegatees of the Administrator of General Services for this purpose shall be the Archivist of the United States, an Assistant Archivist, the Director of the John Fitzgerald Kennedy Library, when a Director shall have been appointed, and such other officials of the National Archives and Records Services Administration as shall be designated by the Administrator for this purpose from time to time in the future.

The procedure for effecting the processing of the papers shall be a continuing process, as follows: The delegatees of the Administrator of General Services will submit to the Donors' Committee for its review and concurrence a list of those segments, units, subdivisions or series of the papers of John Fitzgerald Kennedy, which it is proposed to review and classify during the period ending December 31, 1972. Committee and the Administrator's delegatees will arrive at an agreement on the order of priority which is to be followed in processing each of the units of paper proposed for "review and classification." The Committee and delegatees will also confer and arrive at an agreement as to the type and character of materials that the Committee wishes at this time to specify as "Donors' Restricted Materials" in accordance with the terms of the Instrument of Gift. (Paragraph the Fifth, Section i). The Donors' Committee and Administrator's delegates will also discuss and arrive at an agreement on the nature and character of the materials that will be placed under seal as "Archivist's Restricted Materials" in compliance with the definitions of that class of materials set forth in the Instrument of Gift (Paragraph the Fifth, Section ii).

The Administrator's delegatees will then undertake the review of the agreed-upon segments of President John Fitzgerald Kennedy's papers, in the order of priority agreed to. From time to time as this review proceeds, the Donors' Committee will inspect the results, examining or sampling both the papers that it is proposed to open for research in the segments examined by the delegatees, and the papers that it is proposed to place under seal. This review by the Committee will cover both the Donors' Restricted Material (if any) and, subject to paragraph Sixth of the aforementioned deed of February 25, 1965, the Archivist's Restricted Material. The purpose of this inspection will be to satisfy the Donors' Committee that

the work is being carried out to the satisfaction of the Committee. Results of the work will continue to be inspected by the Committee to whatever extent it wishes, in order to make certain that the work is being done in accordance with the terms of the aforementioned deed of Febryary 25, 1965, and the agreements reached between the Donors' Committee and the Administrator's delegatees.

All materials selected to be placed under seal will be physically removed from the boxes in which they were contained, placed in clearly marked containers of a color different from that used for the "open" material, and deposited in a specially secured portion of the stack areas of the John Fitzgerald Kennedy Library or of any Federal Records Center where the materials may be temporarily located.

When a significant quality of the materials has been reviewed and processed in this manner (but in no case prior to the formal opening of the Library), there will be a public announcement by the General Services Administration of the opening for research of certain designated portions of President John Fitzgerald Kennedy's papers.

After the completion of this process for the segments of materials that had been designated to be reviewed by December 31, 1972, the same procedure will be followed in scheduling "review and classification" of the remaining segments of President John Fitzgerald Kennedy's papers until the screening of the entire collection has been completed.

The Donor's Restricted Materials and the materials described in paragraph Fifth ii(c) of the aforementioned deed of February 25, 1965, under seal will be periodically reviewed by the Administrator's delegatees. If for any reason it should appear that the passage of time has cured the factor that had been the original cause of

placing the papers under seal, it will be proposed to the Donors' Committee for their review and concurrence that these materials be placed in the "open" portion of the files and made available for research.

signed	signed
	/s/Jacqueline Kennedy
Administrator of General Services - date	Donor - date
	/d/July 23, 1
	Edward A. Kennedy
	2 August
	Donors - date

EXHIBIT H

May 5th, 1965.

Honorable Lawson B. Knott, Jr.
Acting Administrator
General Services Administration
Washington, D.C. 20405

Dear Mr. Knott:

Reference is made to the Agreement between the United States of America and Mrs. Jacqueline B. Kennedy and the Executors of the Estate of John F. Kennedy dated February 25, 1965, concerning the transfer of materials formerly belonging to and relating to the life and work of John Fitzgerald Kennedy to the United States of America.

Notwithstanding any of the restrictions imposed on access to the materials in the referenced February 25, 1965 Agreement, except the materials specified in

Article Fifth ii(c) thereof, the Archivist of the United States is authorized to make available to President Lyndon B. Johnson, while in office, any materials or information with respect thereto, relating to or required in connection with the transition of the Office of President from the late President John F. Kennedy to President Johnson, or otherwise requested by President Johnson in connection with performance of the duties of the Office of President.

/s/Jacqueline B. Kennedy
Donor

/s/Jacqueline B. Kennedy

/s/Robert Kennedy

/s/Edward Kennedy
Donors

EXHIBIT I

The White House
Washington

August 13, 1965

Dear Mr. Knott:

It has long been my belief that the papers and other historical materials of a President constitute a vital part of our Nation's historical heritage and that such papers and materials should be permanently preserved and made available for scholarly research and study.

You are aware that it also has long been my intention to donate my papers and other historical materials to the United States for ultimate deposit in a Presidential Archival Depository as provided by Section 507 (f) of the Federal Property and Administrative Services Act of 1949, ad amended (44 U.S.C. 397(f)).

You are also aware that the University of Texas has advised me of its intent, consistent with its educational purposes and objectives, to provide, at its expense, an appropriate site within the principal academic environs of the University of Texas, and to construct thereon a suitable Presidential Archival Depository to be known as the Lyndon Baines Johnson Library and to turn over, dedicate, and make available the space and facilities so to be constructed, furnished, and equipped by it, to the United States for its use in perpetuity pursuant to the aforesaid authority, as a Presidential Archival Depository for the housing, preservation, display, and appropriate use of my Presidential papers and other historical materials.

I have indicated to the University of Texas and publicly announced my approval of its proposal.

Accordingly, and in furtherance of the public purposes which will thus be served, I hereby offer as a gift to the United States for the purpose of ultimate deposit in the said Presidential Library my Presidential and other papers, documents, historical materials, mementos, objects of art, and other memorabilia, including books, motion pictures, still pictures, and sound recordings, all hereinafter called "Materials" belonging to me or in my possession which relate to my life and work, subject to the condition that these Materials be accepted, preserved, and made available by the United States under the following conditions:

1. As an initial step, the Materials shall be accepted by the United States for deposit in the National Archives pursuant to Section 507(e) of the Act, supra, until the completion and acceptance by the United States of the above-described Lyndon Baines Johnson Library at which time the Materials shall be deposited in that Library and administered in accordance with the pertinent provisions of the Act, supra.

2. It is my purpose to make the papers and other historical materials referred to herein available for the purpose of study and research as soon as possible extent. However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidence is essential to the functioning of the constitutional office of the Presidency, it will be necessary to withhold from public scrutiny certain papers and classes of papers for varying periods of time. Therefore:

(a) I hereby reserve the right to restrict the use and availability of any Materials to which this agreement applies, irrespective of the time when such Materials may have been, or may be delivered to the United States, for such time as I, in my sole discretion, may from time to time specity, and such restrictions shall be adhered to and observed in all respects for as long a period of time as may be specified or until such restrictions are revoked or terminated by me or persons authorized to act on my behalf with respect thereto, or as otherwise provided in this agreement.

(b) During my tenure as President of the United States any Materials accepted and deposited

pursuant to paragraph 1, above, shall be made available by display or otherwise for public inspection, research or other use subject to restrictions (1) imposed at time of delivery of possession thereof to the United States; (2) as otherwise provided for in this agreement; and (3) as may be imposed by me or by persons authorized to act for me with regard thereto.

(c) Archival personnel of the United States designated by the Administrator of General Services shall review the Materials to which this agreement applies and any Materials in the following categories shall be placed under seal of restriction:

(i) Materials containing statements which may in any manner be used to injure, embarrass, or harass any person, or Materials which may in any manner be prejudicial to the conduct of foreign relations of the United States of America, or Materials containing statements made by or to me in confidence.

(ii) Defense information that has been security classified pursuant to law or Executive order: *Provided that* such information may be declassified or otherwise made available in accordance with the procedures established by law or Executive order governing availability of security-classified information.

(iii) Papers relating to my family or private affairs, and papers relating to the families or private affairs of persons who have had correspondence with me.

(d) All Material restricted pursuant to this agreement shall be reviewed from time to time by Archival personnel designated by the Administrator of General Services, the restrictions removed therefrom, and the Materials made available for public display and research use as soon as the passage of time or other circumstances no longer require such Materials being kept under restriction: *Provided that* restrictions imposed on Materials by paragraph 2(b), above, shall not be removed during my tenure as President without my personal approval or the approval of persons authorized to act for me with respect thereto.

(e) Materials placed under restriction pursuant to this agreement shall not be made available to anyone or their contents divulged to anyone (including public officials) except (1) persons authorized under the terms of paragraph 5 below and (2) Archival personnel designated by the Administrator of General Services when performing essential archival work processes on such papers under the supervision of the Administrator of General Services: *Provided that* access to security-classified materials shall be made available in accordance with the procedures established by law or Executive orders.

3. All unrestricted materials shall upon (a) deposit in the Lyndon Baines Johnson Library and (b) expiration of my tenure as President, he made available for public display and inspection, and made equally accessible to all competent private persons interested in using the materials for study and scholarly research purposes subject to regula-

tions issued by the Administrator of General Services governing the use of materials in the Library: *Provided that* such materials may be made available for display, inspection and research purposes prior to the expiration of my tenure as President with my personal approval.

4. This offer shall not and is not intended to apply to or embrace such items which I determine to be of special or private interest to the personal and family affairs of myself, my wife and children, and I specifically reserve the right to retain title and possession and to regain possession of any such items that I, in my sole discretion, may determine to be excluded from the purview of this gift, irrespective of the fact that such items may have been theretofore delivered to the United States.

5. All Materials transferred to the United States pursuant to this agreement shall be freely accessible to me or my wife or to persons designated by me in writing, subject to the provisions of applicable law and Executive orders governing availability of security-classified information.

6. Subject to restrictions imposed by or pursuant to this agreement, all Materials transferred to the United States pursuant to this agreement shall be subject to the right of the Administrator in his discretion (a) to make temporary loans thereof to such persons, organizations or institutions as he shall determine; (b) to dispose by sale, exchange or otherwise of any such papers or historical materials which he may determine to have no permanent value or historical interest or to be surplus to the needs of the Lyndon Baines Johnson Library; and (c) to remove from the said Library any and all of such papers or historical materials if he shall

deem it necessary to preserve them from threatened destruction.

7. I hereby assign to the United States all my literary property rights in all papers transferred to the United States in accordance with the terms and conditions of this agreement, except that I reserve to myself and my heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that I have written or may hereafter write for publication, including the right to license the publication of such material.

8. The offer of the Materials to which this agreement is applicable is conditioned upon the United States, acting by and through the Administrator of General Services, entering into an agreement with the University of Texas to utilize as a Presidential Archival Depository the space and facilities to be constructed, furnished, equipped and made available by it for such use without transfer of title, and upon agreement by the United States to maintain and operate the Library at all times thereafter as a Presidential Archival Depository for the preservation of such Materials, in accordance with the provisions of Section 507(f)(1) (44 U.S.C. 397(f)(1)) of the Federal Property and Administrative Services Act of 1949, as amended.

Sincerely,
/s/Lyndon B. Johnson

Honorable Lawson B. Knott, Jr.
Administrator of General Services
Washington, D.C.

[SEAL]

EXHIBIT J

General Services Administration
Washington 20405

Office of the Administrator

August 17, 1965

The President
The White House

Dear Mr. President:

It is an honor and pleasure on behalf of the United States to accept, in accordance with the powers vested in me by the Federal Property and Administrative Services Act of 1949, as amended, your generous offer of certain papers and other historical materials contained in your letter of August 13, 1965, under the conditions and restrictions which you have prescribed therein.

This priceless gift to the nation and scholars of this generation and those that follow will forever enrich our history and culture. I know that the memory of your selfless gesture will live eternally in the hearts of a grateful people.

Respectfully yours,

/s/Lawson B. Knott, Jr.
Lawson B. Knott, Jr.
Administrator

EXHIBIT K

The White House
Washington

December 19, 1968

Dear Mr. Knott:

In my letter to you of August 13, 1965, I offered my Presidential and other papers and historical materials (therein defined as Materials) as a gift to the United States for the purpose of ultimate deposit in the Lyndon Baines Johnson Library. My offer further expressed this objective: to make the Materials available for the purpose of study and research—as soon as possible and to the fullest extent possible.

That offer was accepted by you on August 17, 1965.

The President is the recipient of many confidences of others. The inviolability of these confidences is essential to the proper conduct of the Office of the Presidency. It becomes necessary, therefore, to withhold from public scrutiny certain papers and certain classes of papers for varying periods of time. Accordingly, my offer contained the following provision in paragraph 2(a):

> "I hereby reserve the right to restrict the use and availability of any Materials to which this agreement applies, irrespective of the time when such Materials may have been, or may be delivered to the United States, for such time as I, in my sole discretion, may from time to time specify, and such restrictions shall be adhered to and observed in all respects for as long a period of time as may be specified or until such restrictions are revoked or terminated by me or persons authorized to act on my behalf with respect thereto, or as otherwise provided in this agreement."

The volume of manuscript papers included in the Materials available for deposit under the terms of our agreement now exceeds 22 million pages. A significant future growth in volume is anticipated, perhaps to a total in excess of 30 million different pages.

These Materials must be reviewed to determine which of them must be restricted and the nature of the restriction. This review will require a meticulously careful, thorough and time-consuming analysis. There are certain papers I will be obliged to restrict personally from access to others.

To fulfill my stated objective of making the Materials available for study and research as early and as fully as possible—and to avoid any extensive delay inconsistent with that objective—a staff should be assembled to perform this review promptly under guidelines and instructions I will provide. A sufficient number of qualified personnel should be assigned to review as much of this material as possible during the next five years when I can devote a large part of my time to supervising this review.

I am advised that within the Executive Departments and Agencies—from which significant portions of these Materials were developed—there are personnel familiar with the Materials and the process of conducting the official business of government. Because of such familiarity, these persons would be far better qualified than persons less acquainted with the Materials to undertake the necessary review and analysis in order to protect our Nation's best interests.

I am advised that Section 208(c) of the Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator of General Services, in carrying out the responsibilities imposed upon him by that Act:

"to utilize in his agency the services of officials, officers, and other personnel in other executive agencies, including personnel of the armed services, with the consent of the head of the agency concerned."

It is my understanding that you can complete arrangements with the Heads of the Departments and Agencies concerned to utilize the services of responsible and knowledgeable officials, officers and other government personnel to perform the review and analysis of the Materials, in keeping with paragraph 2(a) of my offer of gift.

Accordingly, when, pursuant to the provisions of law cited above, such government career and service personnel, acceptable to me, are assigned to review under my direction the classified and technical Materials involved, I will turn over to the General Services Administration from time to time the Materials within the scope of my offer of gift.

In addition to the review of the Materials required by paragraph 2(a) of my offer of gift, another review is required by paragraph 2(c). That review contemplates an analysis of the Material by archival personnel. Any of the Materials falling in the three categories specified in paragraph 2(c) must be placed under seal of restriction.

The arrangements I have proposed in this letter for the purposes of the paragraph 2(a) review should enhance, complement, and expedite the review required by paragraph 2(c). These new arrangements should hasten the time in which the Materials can be made available for research and study in conformity with my fundamental objective, as stated in my offer of gift.

I should appreciate your advice whether you accept this letter as an amendment of my offer of gift dated August 13, 1965, accepted by you on August 17, 1965.

Sincerely,
/s/Lyndon B. Johnson

Honorable Lawson B. Knott, Jr.
Administrator
General Services Administration
Washington, D.C.

[Caption Omitted in Printing]

AFFIDAVIT OF THOMAS P. WOLF

Thomas P. Wolf, being duly sworn under oath, hereby deposes and says:

1. Since December 26, 1973, I have served as a Special Assistant to the Administrator of the General Services Administration. I am currently Special Assistant to the Administrator for Presidential Materials and Acting Director, Office of Presidential Materials. In that capacity it has been one of my responsibilities to provide access to the Nixon Presidential Materials that are under the Administrator's control when such access, in each instance, complies with the provisions set forth in outstanding court orders in *Nixon v. Sampson, et al.*

2. In February of this year I was informed by Counsel to President Ford that representatives of the Special Prosecutor's office and attorneys for Richard Nixon had reached an understanding whereby Mr. Nixon agreed to make available to the Special Prosecutor items from among the Nixon Presidential Materials that were relevent to the Special Prosecutor's investigations. I was authorized by the Administrator to serve directly as agent for Counsel to the President in implementing this understanding. The understanding called for the assist-

ance of professional archivists, under my administrative supervision, to review portions of the Presidential materials and to make initial determinations concerning the relevancy of the items reviewed, based upon a list of current investigations supplied to the archivists by the Special Prosecutor. Copies of items deemed relevant were then to be delivered to Mr. Nixon's attorneys. Thereafter, upon receipt of appropriate authorizations from Mr. Nixon's attorneys, the items or portions so authorized were to be delivered to Mr. Philip W. Buchen, or his agent, who would review them prior to providing them to the Special Prosecutor.

3. The Special Prosecutor had previously been provided an index of file folder titles covering the files of certain staff members and staff offices. These file titles encompassed approximately 618 linear feet of documentary materials (or on an archival estimated basis, more than 1.5 million documents). From these indexes the Special Prosecutor selected 1,403 folders which, based upon their titles, he indicated he believed might contain items related to the list of current investigations supplied to the archivists.

4. A staff of approximately ten archivists, working at different periods, initially reviewed 1,269 of the 1,403 files selected by the Special Prosecutor. Attorneys for Mr. Nixon requested and, with the approval of the Special Prosecutor, were permitted to review initially the remaining 134 files. Some but not all of these 134 files were subsequently reviewed by the archivists. At the outset each file reviewed by the archivists was examined to determine whether it contained items related to any of the investigations listed by the Special Prosecutor, even though the Special Prosecutor's original designation of the reason for examination of that file may have pertained to only one or two investigations. On the last

383 folders this examination was limited to those investigations specifically designated by the Special Prosecutor for that specific folder.

5. Of the 1,269 files reviewed, 357 contained materials which the archivists deemed related to one or more of the investigations on the list provided by the Special Prosecutor. Of these, 270 contained items which the archivists deemed actually related to the investigation(s) specified for that folder by the Special Prosecutor.

6. The archivists involvment in the review of the 1,403 files required a total of over 2,800 staff hours.

7. Based upon the experience gained from this project, it is my opinion that because of the differing filing procedures utilized be certain key staff members of the Nixon Administration, this review of the Nixon Presidential Materials for the purpose of locating for the Special Prosecutor items relevant to specific topics or designated matters could not have been made without in many instances reviewing substantial quantities of items unrelated to those topics or matters for which we had been asked to search, including personal and political items, and in some instances materials classified higher than the security clearance (Top Secret) normally held by professional archivists.

/s/Thomas P. Wolf
THOMAS P. WOLF

Subscribed and sworn to
before me this 7th day
of July, 1975.

/s/William Hanbine
Notary Public
My Commission Expires:
August 14, 1976

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM F. MATTHEWS

City of Washington)
District of Columbia) ss.

WILLIAM F. MATTHEWS, being duly sworn upon oath, deposes and says as follows:

1. I am Chief of the White House Central Files Unit in the White House. I have been employed in the Central Files Unit, originally known as the White House File Room, since 1947, and have held my current position since February 15, 1963. My duties include supervision of the more than 40 employees of Central Files who receive, classify, file, maintain and retrieve upon request the documents generated or received by the White House.

2. Material in Central Files consists of incoming correspondence processed by the White House mail rooms; copies of outgoing correspondence, reports memoranda, etc., generated or received by the Office of the President and the various White House staff offices. Most of the incoming correspondence consists of letters to the President from private citizens, but it also includes letters from state and federal officials, including Members of Congress; letters from officials of foreign countries; and letters addresses to officials of the White House other than the President. Drafts of memoranda, speeches, correspondence, etc., which are prepared by officials other than the President are generally filed with Central Files. Drafts of such documents which are hand written by the President generally are not retained in Central Files.

3. Correspondence and records of the Domestic Council and the Council on International Economic Policy are filed in the Central files. I have no personal

knowledge of what other files may be retained by these two Councils. All other bodies in the Executive Office of the President (e.g., National Security Council, Office of Management and Budget, Council of Economic Advisors, Council on Environmental Quality, Office of Telecommunications Policy), however, maintain their own separate filing systems, and, as to them, Central Files receives only their correspondence or transmissions into the President's office and copies of the correspondence or transmissions from the President's office to these bodies. As to the Office of the President and the various staff offices, each maintains certain papers in its own filing area during the course of the administration. In addition, most officials in the White House keep a chronological file of the documents prepared by them.

4. Central Files also keeps a file of documents called the "permanent file". This permanent file includes copies of documents which are precedential in nature and which will, in the opinion of White House staff, be useful to later officials in dealing with various internal White House situations by succeeding administrations.

5. The volume of materials maintained in Central Files has increased four or five-fold during the time I have been employed in the unit, that is, since the Truman Administration. This increase is generally attributable to the increase in size and work produce of the White House in general; the nature and scope of materials contained in the materials in Central Files has remained essentially unchanged. The only significant change in content of the Central Files during the Nixon Administration was the creation, in 1971, of the "Special Files Unit" under the direction of Gertrude Fry. That unit, when created, took possession from Central Files of certain materials relating to the Office of the President and selected staff offices and, since 1971, has reviewed and culled materials from

those offices prior to their transmission to Central Files. Access to materials maintained in Special Files was more restricted than was access to the Central Files. I have no personal knowledge of the contents of the materials maintained by the Special Files Unit, although we do receive a cross-referencing card indicating the existence of and identifying such materials.

6. A general description of the operation of Central Files is included in Exhibit A to this Affidavit which is a ttue copy of an eight-page pamphlet which is entitled "The Role of Central Files in the White House Office," and a revision of this pamphlet in 1971, a true copy of which is attached hereto as Exhibit B.

7. At the close of the administrations of Presidents Truman, Eisenhower, Kennedy, and Johnson, the files in the custody of Central Files, except for the permanent file, were collected, boxed, and disposed of in accordance with the wishes of the outgoing President. I have personal knowledge of the disposition of Central Files at the close of the administrations of Presidents Truman, Eisenhower, Kennedy, Johnson, and Nixon.

8. In January of 1953, the files in the custody of Central Files, except for the permanent file, were boxed and shipped, in accordance with Mr. Truman's instructions, to a building in Jackson County, Missouri. Except for the permanent file, not a single file in the custody of Central Files received during the Truman Administration remained in the White House Central Files when President Eisenhower assumed office. However, there were other files in the Records Office and the Administrative Office which dealt with various White House functions which remained. I have no knowledge of any attempt to retain or make copies of documents that might be useful to the incoming administration for reference and carrying on the continuing business of government.

9. At the close of the Eisenhower Administration in 1961, the files in the custody of Central Files, except for the permanent file, were boxed and shipped out of the White House prior to January 20, 1961, leaving, to my knowledge, no files in Central Files whatsoever for use or reference by the incoming administration. Some of the materials were shipped to Gettysburg, Pennsylvania, while others were shipped to Albilene, Kansas. To my knowledge, no documents except for the permanent file and files in other White House offices such as the Records Office or the Administrative Office were retained.

10. After President Kennedy's death in November of 1963, all files in the custody of Central Files, except for the permanent file, were segregated from the materials generated thereafter relating to the Johnson Administration. A memorandum from William Hopkins, Senior Executive Clerk at the time and my immediate superior, was sent to all White House staff members describing what should be done with the files relating to the Kennedy Administration. A true copy of that memorandum is attached hereto as Exhibit C. As materials were received after November 22, 1963, relating to the period prior to that date, they were placed in the Kennedy Administration files and kept strictly separate from the files of the Johnson Administration. Mr. Hopkins gave specific instructions that materials from the Kennedy Administration were not to be provided to anyone in the new administration, and in fact no files from the Central Files, except for the permanent file, were provided. However, no attempt was made to get personal or chronological files from the various White House officials. A few months after November 22, 1963, the Kennedy Administration files from the Central files were boxed and sent to a storage area at National Archives to await shipment to Massachusetts upon completion of arrangements for the Kennedy Library.

11. In January 1969, all files of the Johnson Administration in the custody of Central Files, except for the permanent file, were collected, boxed, and shipped to Austin, Texas, for storage until completion of the Johnson Library. No files of any kind in the custody of Central Files were kept or copied for use by the Nixon Administration.

12. At the time of President Nixon's resignation on August 9, 1974, instructions were sent to the staff regarding the disposition of records in their possession. A true copy of the memorandum signed by Jerry Jones, Staff Secretary, setting forth these instructions is attached to this Affidavit as Exhibit D.

13. Over an approximate four day period, beginningg August 9, 1974, all files which had at that date been in the custody of Central Files, except for the permanent file, were boxed and turned over to the Office of Persidential Papers. Files outstanding on August 9, 1974, which were later received from staff offices, were also sent to the Office of Presidential Papers. Such files are still occasionally found among staff office files and when received by Central Files, are then sent to the Office of Presidential Materials. Requests to provide Nixon Administration files to the incoming administration after August 9, 1974, were not honored because all files had been boxed and turned over to the Office of Presidential Papers, later the Office of Presidential Materials.

14. Any calls from officials of the incoming Ford Administration regarding immediate boxing and removal of materials of the Nixon Administration or requests for access thereto, were referred to the Office of Presidential Papers since this is where they had been sent by Central Files.

/s/William F. Matthews
WILLIAM F. MATTHEWS

Subscribed and sworn to before me this 7th day of July, 1975.

/s/William Hinbine
Notary Public
My Commission expires:
August 14, 1976

[Caption Omitted in Printing]

AFFIDAVIT OF GERTRUDE FRY

City of Washington)
District of Columbia) ss.

GERTRUDE FRY, being duly sworn under oath, deposes and says as follows:

1. I am presently employed in the White House Office as Staff Assistant in the Staff Secretary's Office. I was first employed by the White House on January 21, 1969 as Secretarial Assistant to Egil Krogh in charge of security. I then became Staff Assistant for Security until September, 1972, when I was appointed to the position of Supervisor of the Special Files Unit. I held that position until June 23, 1975.

2. The Special Files Unit was created in September, 1972 and continued until June, 1975. At present, it is being phased out by the Ford Administration. It is my understanding that Special Files was created in order to provide a central storage location for sensitive material. Previous to September, 1972, much of this material had not been sent to Central Files, but had been dispersed throughout the White House and held by the individual members of the President's staff in their own offices. Our instructions from President Nixon's then legal counsel,

John Dean, were that such sensitive files should be centrally located and further, that they should be indexed and filed in the same manner as are the files in Central Files. In the absence of such a centrally located and properly categorized file, there was no way of knowing the location of any of these files. Also, the review and categorization of the presidential materials which occurs after the President has left office could proceed more quickly if these sensitive files, prior to the President's leaving, had been centrally filed and properly categorized.

3. In establishing and maintaining the Special Files, we utilized and followed the Central Files Manual, which directs the manner of filing and categorization of all White House documents. As to most files placed in Special Files, a blue cross-reference card was sent to Central Files so that Central Files would have a record of where these files were located.

4. Special Files initially conducted a review of the files in the "Confidential File Section" located in Central Files. Criteria were given to Special Files to determine which documents should be culled from the Confidential File Section and placed in Special Files. The criteria were:

(1) Investigative reports on individuals.

(2) Applications and recommendations for positions.

(3) Documents containing derogatory remarks concerning the character, loyalty, integrity, or ability of individuals.

(4) Documents concerning personal, family or financial affairs of individuals.

(5) Documents containing information which could be used to harass living persons or relatives of recently deceased persons.

(6) Information prejudicial to the national security.

(7) Information prejudicial to foreign relations.

(8) Communications addressed to the President in confidence, the immediate publication of which would result in discouraging confidential communications to a President in the future.

(9) Documents pertaining to the President's personal, family, business, and financial affairs.

(10) Security-classified information.

(11) Documents specifically restricted by the President.

(12) Politically sensitive information or documents.

In addition to documents meeting the above criteria, Special Files also held documents in the President's handwriting, and all the files from the Staff Secretary's Office. During my tenure in the White House, Presidential handwriting documents had never been held in Central Files to my knowledge. Rather, a special file for such documents had been maintained in the Staff Secretary's Office.

5. After initial establishment of Special Files, the plan was that each individual member of of the President's senior staff would send to Special Files sensitive material to be stored for his exclusive retrieval. In practice, however, Special Files did not receive sensitive material from many top staff members. In addition, Special Files did receive the files of all staff members when they resigned during President Nixon's term. We would then review all of these files, and any boxes containing documents meeting the criteria outlined above were retained under Special Files control. The remaining boxes were sent to Central Files. Special Files

now numbers approximately 400 filing boxes roughly one cubic foot in size, approximately sixteen of which contain Presidential handwriting documents. It is also a fact that some materials stored in Special Files were never processed by the Special Files staff. These files were placed in the Special Files Unit after May 1, 1973 when some senior White House staff members resigned. They were placed in the Special Files Unit in order to provide them the tightest security possible.

6. When Special Files was created, access to documents stored there was restricted to the person with whom the file originated or to persons we in Special Files determined had a genuine need to see the document or file. Where questions arose as to a particular request, we cleared the matter with the Staff Secretary.

7. Now that Special Files is being terminated, files of the Ford Administration in our custody will be placed in the Confidential File Section in Central Files. Access will require approval of Mr. Matthews, but only if one of the two criteria formerly used by Special Files and described above is met.

8. As part of my job in Special Files, I have visited some of the Presidential Libraries in the National Archives System. One of my purposes in doing so was to gain knowledge on organizing and arranging Special Files.

/s/Gertrude Fry
GERTRUDE FRY

Subscribed and sworn to before me this 7th day of July, 1975.

/s/ Thomas J. English
Notary Public
My Commission expires: June 30, 1976

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN C. BRODERICK

John C. Broderick, being duly sworn under oath, deposes and says:

(1) I am Chief of the Manuscript Division of the Library of Congress, and have been employed in that position since January 6, 1975. Previous to my appointment as Chief of the Manuscript Division, I was employed by the Library of Congress in various positions beginning in 1964. As a result of my employment with the Library of Congress, and my experience as a student of the papers of constitutional officeholders, I have acquired knowledge of the history and ultimate disposition of certain of those papers. The substance of this Affidavit is derived from that knowledge and represents an accurate summary of these particular instances, to the best of my knowledge, information, and belief.

(2) The Library of Congress maintains the papers, in whole or in part, of twenty-three presidents. The papers of other presidents are located elsewhere. For example, the papers of Presidents John and John Quincy Adams are in the Massachusetts Historical Society; those of James Buchanan in the Historical Society of Pennsylvania; Millard Fillmore's papers are in the Buffalo and Erie County Historical Society; the papers of Rutherford B. Hayes are in the Hayes Library, Fremont. Ohio; and the Warren G. Harding papers are in the Ohio Historical Society. All of these are non-federal repositories. A copy of a chart prepared by my office illustrating the disposition of all of the papers of presidents is attached to this Affidavit as Exhibit A.

(3) Between 1967 and 1974, Justice William J. Brennan donated to the Library of Congress 55,000 documents covering his term in the Supreme Court from

1956 to 1970. The collection includes Memoranda for Conference, Bench Memos, and case files by case name. The case files include memoranda written to other Justices, personal notes on the case, briefs, memoranda from law clerks, and other material which the Justice has accumulated with regard to cases.

(4) Attached hereto as Exhibit B is a true and correct copy of the "Instrument of Gift" executed by Justice Brennan providing the terms on reservation of literary rights and access to legal files and correspondence.

(5) Justice William O. Douglas has donated to the Library of Congress correspondence and other papers pertaining to his work in the Supreme Court and elsewhere covering 1925 to 1952. The content of Justice Douglas' papers is similar to that of Justice Brennan. Attached hereto as Exhibit C are two of the "Instruments of Gift" executed by Justice Douglas providing for disposition and access to these materials.

(6) Between 1972 and 1974, the Hugo Black family donated to the Library of Congress papers from Justice Black's entire career, 1898-1971, including his Supreme Court papers. These later papers include correspondence, assignment and conference lists, opinions in manuscript, near-print and printed form, memoranda, research materials, printed matter, vouchers, financial materials, and clippings. Also included in the collection are dictaphone recordings, phonodiscs, magnetic tapes, and motion pictures. Justice Black directed his family to destroy his conference notes, which was done.

(7) Attached hereto as Exhibit D is a true and correct copy of the "Instrument of Gift" from the Black family to the Library of Congress containing the terms governing literary rights and access to the materials.

(8) The papers of Justice Harold H. Burton number 120,000, span his career from 1896 to 1964, and include legal files, diaries, speech files, articles files, briefs prepared by law clerks for study, conference sheets, studies on individual cases, drafts of opinions, and comments on opinions from other Justices. The majority of the papers were donated to the Library of Congress in two installments: Justice Burton gave a substantial collection in October, 1959; and his son made a second major installment in January, 1965. Attached hereto as Exhibit E are true and correct copies of the "Instruments of Gift" covering the Burton papers governing any restrictions on access, and literary rights.

(9) Mrs. Charles Evans Hughes in 1952 donated to the Library of Congress a large body of correspondence of Chief Justice Hughes. This donation includes correspondence relating to both Hughes' Supreme Court career and personal life. No case files are included such as are in the donations of other Supreme Court Justice. As provided in Exhibit F attached hereto, which is a true and correct copy of the Instrument of Gift executed by Marjory Stuart Hughes, originally access to the collection was prohibited except upon permission of Chief Justice Hughes' daughter. As of January 1, 1975, no restrictions remain. Literary rights are reserved to Chief Justice Hughes' daughter.

(10) The Library of Congress also holds the papers of several Congressmen, although most congressional collections are privately held. For example, the papers os Sam Rayburn are located in the Sam Rayburn Library at Bonham, Texas and the papers of Estes Kefauver are in the University of Tennessee Library at Knoxville, Tennessee. Among the congressional holdings of the Library of Congress are the papers of Emanuel Celler and the papers of Robert A. Taft. Exhibits G and H, attached

hereto, are true and correct copies of Instruments of Gift to the Library. They provide the terms for access to collections and right to review quotations from the materials.

/s/John C. Broderick
JOHN C. BRODERICK

Subscribed and sworn to before me
this 28th day of July, 1975.

/s/Signature
Notary Public
District of Columbia
My Commission Expires: September 30, 1979

BEST COPY AVAILABLE

APPENDIX I

DEPOSITORIES AND PURCHASES OF PRESIDENTIAL PAPERS

President	Depositories[1]	Purchases[2]
George Washington (1732-99). President 1789-97.	The Library of Congress has some 800 volumes of letters, diaries, official papers, and other manuscripts. The Henry E. Huntington Library (San Marino, Calif.) has 450 letters. The Connecticut State Library has the extensive Trumbull correspondence. Other collections are in the Chicago Historical Society (150 pieces), the U.S. Naval Academy (15 pieces), Maryland Historical Society (62 pieces), Boston Public Library (5 vols.), Harvard College Library (58 pieces), William L. Clements Library (Ann Arbor) with 147 items, Detroit Public Library (part of the diary), Minnesota Historical Society (123 pieces), Princeton University Library, New Jersey State Library (3 items), Long Island Historical Society (123 pieces), Cornell University Library (80 pieces), Morristown National Historical Park (95 pieces), Columbia University Library (57 pieces, including parts of the diary), New York Historical Society (215 pieces), New York Public Library, Pierpont Morgan Library (New York, N.Y.) (114 items), Duke University Libraries (59 pieces), Historical Society of Pennsylvania, Virginia Historical Society (225 pieces), Virginia State Library, and William & Mary College (205 pieces). The Washington home, Mount Vernon, has family papers and diaries of the later years.	The Library of Congress acquired its papers in purchases totaling $45,000 in 1834 and 1849.
John Adams (1735-1826). President 1797-1801.	The Adams papers are largely in the Massachusetts Historical Society, which has the diaries, the autobiography, and various manuscripts. There are 8 boxes of papers dated from 1775 to 1813. The Boston Public Library has some papers and some books with annotations by Adams. The post-presidential papers in the Harvard College Library are chiefly retrospective comments on the Revolution. There are scattered papers in the Columbia University Library, the Duke University Hospital Library, Princeton University Library, the Pierpont Morgan Library, and Historical Society of Pennsylvania.	
Thomas Jefferson (1743-1826). President 1801-09.	The Library of Congress has 236 volumes of the correspondence, and the Massachusetts Historical Society has 77 volumes of papers and some of his record books. The University of Virginia has 2,560 items, Colonial Williamsburg 600 pieces, and William & Mary College 285 pieces. The Virginia Historical Society has 100 items, and there are some assorted papers in the Virginia State Library. Other collections are the Henry E. Huntington Library (800 pieces), the Historical Society of Delaware (4 items), the William L. Clements Library (91 pieces), the Missouri Historical Society (130 items), Princeton University Library, Columbia University Library (21 items), New York Historical Society (130 items), New York Public Library, Pierpont Morgan Library (245 pieces), Duke University Libraries (33 pieces), American Philosophic Society (Philadelphia), Historical Society of Pennsylvania, and the University of Texas (68 items).	Many of the 23,600 items held by the Library of Congress were purchased in 1848 for $20,000 from Thomas Jefferson Randolph, executor of the Jefferson estate. Fully half of the collection purchased at that time was returned, however, as being of too "personal" a nature for government acquisition. This returned cache of papers was ultimately dispersed by the heirs to friends, relatives, and collectors.
James Madison (1751-1836). President 1809-17.	There are 114 boxes and 10 volumes of papers in the Library of Congress. The University of Virginia has 165 items, the New York Historical Society, 134 pieces, and the Henry E. Huntington Library 104 pieces. There are smaller collections at the Virginia State Library, William & Mary College, the Virginia Historical Society, the Historical Society of Pennsylvania, the Pierpont Morgan Library, William L. Clements Library, and Princeton University Library. The New York Public Library has a collection of 390 items.	Of the approximately 10,000 items in the Madison collection held by the Library of Congress, most were acquired through 2 purchases from Mrs. Madison and one from the Chicago Historical Society. The cost of the 3 transactions amount to $65,000.
James Monroe (1758-1831). President 1817-25.	Chief repositories are the Library of Congress with 40 volumes and 5 boxes, New York Public Library with 1,300 items, and the James Monroe Memorial Foundation (Fredericksburg, Va.) with an extensive and varied collection. There are also materials at William & Mary College (111 pieces), the University of Virginia (180 pieces), the New York Historical Society (50 items), the Pierpont Morgan Library (30 items), University of Pennsylvania Library (30 items), the Virginia Historical Society (35 items), and the Virginia State Library.	The Library of Congress holds 4,200 items which were acquired from the Monroe heirs in 1849 for $20,000.

See footnotes at end of table.

DEPOSITORIES AND PURCHASES OF PRESIDENTIAL PAPERS—Continued

President	Depositories [1]	Purchases [2]
John Quincy Adams (1767–1848), President 1825–29.	Most are in the Massachusetts Historical Society (some 15,000 diary pages and 6,300 letters). The Library of Congress has several boxes, and scattered items are in the New York Historical Society, the New York Public Library, and the Pierpont Morgan Library.	
Andrew Jackson (1767–1845), President 1829–37.	The Library of Congress has a collection of over 340 volumes and boxes. The Tennessee State Library has 1,500 items, and the Tennessee Historical Society and the Jackson home, the Hermitage, have additional materials. Other collections are the Chicago Historical Society (350 items), New York Public Library (250 items), Pierpont Morgan Library (72 pieces), Duke University Libraries (50 items), Missouri Historical Society (40 items), Princeton University Library, and New York Historical Society.	Of the 20,000 items held by the Library of Congress, a small number of papers were Donated in 1903 by the F. P. Blair family; 2 purchases of papers were made an 1911 and 1932 for a total expenditure of $18,000. Some of Jackson's papers were lost in 1834 when the Hermitage burned.
Martin Van Buren (1782–1862), President 1837–41.	The Library of Congress has 73 volumes and containers, and the New York State Library has a collection of letters. There are smaller collections in the Columbia County Historical Society (Kinderhook, N.Y.), the Pierpont Morgan Library and the Massachusetts Historical Society.	Van Buren's papers remained in the control of his family until 1904–05 when they were presented to the Library of Congress. The former President is thought to have destroyed many of his papers before his death.
William Henry Harrison (1773–1841), President 1841.	Most are in the Library of Congress and Indiana State Library, but A significant presidential writings are limited to his inaugural address.	number of Harrison's records are thought to have been destroyed when his homestead burned in 1858.
John Tyler (1790–1862), President 1841–45.	There are 8 volumes in the Library of Congress, and a smaller collection in the Duke University Libraries. The University of Virginia Library, William & Mary College, and the Pierpont Morgan Library have collections ranging up to 130 pieces.	While a large part of the Tyler cache was burned in 1965 when Richmond was put to the torch, the Library of Congress purchased its collection from Tyler's son in 1919 for $1,000.
James K. Polk (1795–1849), President 1845–49.	The Library of Congress has 188 volumes and boxes. The diary, running to 25 volumes of up to 200 pages each, is in the Chicago Historical Society. Scattered correspondence and papers are in the William L. Clements Library and the Tennessee Historical Society.	There were 2 purchases of Polk papers by the Library of Congress, 1 from a family heir and 1 from the Chicago Historical Society, both of which totaled $13,500.
Zachery Taylor (1784–1850), President 1848–50.	1 volume and 2 boxes are in the Library of Congress. The Kentucky Historical Society (Frankfort), the University of Kentucky Library and the University of North Carolina Library have assorted papers, mostly pre-Presidential.	
Millard Fillmore (1800–74), President 1850–53.	The Buffalo Historical Society has all but a few that are in the Library of Congress.	
Franklin Pierce (1804–69), President 1853–57.	The largest collection, 1,500 items is in the New Hampshire Historical Society. The Library of Congress has a few additional pieces. But the papers relating to the period of the presidency have, for the most part, disappeared.	Pierce is thought to have destroyed many of his papers; much of his official and personal White House correspondence has disappeared.
James Buchanan (1791–1868), President 1857–61.	The Library of Congress has 11 volumes and boxes, and the Historical Society of Pennsylvania has 25,000 items. There is a considerable collection in the Lancaster County (Pa.) Historical Society. Smaller collections are in Franklin & Marshall College Library, Dickinson College Library, the Rutherford B. Hayes Library (Freemont, Ohio), the Pierpont Morgan Library, the New York Historical Society, and the Princeton University Library.	

See footnotes at end of table.

DEPOSITORIES AND PURCHASES OF PRESIDENTIAL PAPERS—Continued

President	Depositories [1]	Purchases [2]
Abraham Lincoln (1809–65), President 1861–65.	The major collection, over 100 volumes and boxes, is in the Library of Congress. The Illinois Historical Society has over 6,000 items, and the Brown University Library 1,678 pieces. There are 4 boxes of material at the University of Chicago. Other collections are at the Chicago Historical Society (50 items), Indiana University Library (215 items), Boston University Libraries (50 items), Harvard College Library (45 items), New York Historical Society (4 volumes and boxes), New York Public Library (4 boxes), Minnesota Historical Society (11 items), Missouri Historical Society (41 items), the Pierpont Morgan Library (25 items), the Rutherford B. Hayes Library (Fremont, Ohio), and Lincoln Memorial University (Harrogate, Tenn.).	
Andrew Johnson (1808–75), President 1865–69.	The Library of Congress has 275 volumes and boxes. The Rutherford B. Hayes Library has 158 items, and the Duke University Libraries have 42 items.	The Library of Congress acquired its collection of Johnson papers through two purchases from family heirs for $7,500.
Ulysses S. Grant (1822–85), President 1869–77.	The Library of Congress has over 200 volumes and boxes. The Henry E. Huntington Library has 345 items, and the Rutherford B. Hayes Library 225 items. Smaller collections are at the Chicago Historical Society (225 pieces), Illinois State Historical Library (200 pieces), Chicago Public Library (10 pieces), Illinois Historical Society (27 letters), the New York Historical Society (35 items), and the Pierpont Morgan Library (11 pieces).	Though not a prolific letter writer, Grant is reported to have returned certain letters he received as President to the originator of the correspondence.
Rutherford B. Hayes (1822–93), President 1877–81.	Some 300 volumes and 75,000 items are in the Rutherford B. Hayes Library in Fremont, Ohio, Hayes's home. Western Reserve University Library has 8 boxes, and the Library of Congress has 5 boxes.	The first actual Presidential library, the Hayes Memorial Library is maintained by the State of Ohio and the Rutherford B. Hayes-Lucy Webb Hayes Foundation.
James A. Garfield (1831–81), President 1881.	There are 343 volumes and boxes, most pre-Presidential, in the Library of Congress. The Ohio Historical Society has 1 box, and the Rutherford B. Hayes Library has 30 items.	The Library of Congress was made a gift of its Garfield collection in 1930–31 by the former President's children.
Chester A. Arthur (1830–86), President 1881–85.	The Library of Congress has 5 boxes; the New York Historical Society 8 volumes of letters and a box of other papers. The Rutherford B. Hayes Library has 16 items.	
Grover Cleveland (1837–1908).	The major collections are at the Library of Congress with 497 volumes and 109 boxes and the Detroit Public Library with 1,250 items largely relating to the second administration. The Buffalo Historical Society has 75 items, New York Historical Society 30 items, and Pierpont Morgan Library, 14 pieces. Princeton University Library also has a varied collection.	The Cleveland collection of the Library of Congress was presented as a gift by Mrs. Preston, the former President's widow.
Benjamin Harrison (1833–1901), President 1889–93.	The Library of Congress has 290 volumes and 193 boxes. Indiana Library has a box of papers, and the Rutherford B. Hayes Library 42 items.	The Harrison papers were presented to the Library of Congress by members of the former President's family.
William McKinley (1843–1901), President 1897–1901.	There is a collection of 417 volumes and boxes in the Library of Congress, and other sizable collections are at the Western Reserve Historical Society and the Western Reserve University Library (2 volumes of letters). A few papers are at the Rutherford B. Hayes Library.	Approximately 122,000 items were presented to the Library of Congress in 1935 by George B. Cortelyou, the President's personal secretary and executor.
Theodore Roosevelt (1858–1919), President 1901–09.	The Library of Congress has well over 1,000 volumes and boxes. There is another large collection at the Harvard College Library. The Pierpont Morgan Library has the manuscript of his autobiography and some letters. William L. Clements Library has 290 items, the University of Southern California Library 60 items, Bowdoin College Library 15 items, Duke University Libraries 43 pieces, and Yale University Library assorted letters.	The T. R. collection held by the Library of Congress was donated by the former President himself.
William H. Taft (1856–1924), President 1909–13.	There are 1,300 boxes at the Library of Congress. Other collections are at the Yale University Library, Princeton University Library, Western Reserve University Library, and the Ohio Historical Society.	Of the half a million item held by the Library of Congress, none could be consulted prior to 1960 without the consent of the Taft family. The first L. C. deposit of Taft papers was made in 1919 and various additions followed after that time.

See footnotes at end of table.

DEPOSITORIES AND PURCHASES OF PRESIDENTIAL PAPERS—Continued

President	Depositories[1]	Purchases[2]
Woodrow Wilson (1856–1924). President 1913–21.	The Library of Congress has 1,375 boxes. Yale University Library has the Wilson-House correspondence. Harvard College Library has the letters to Walter Hines Page. There are major materials at Princeton University. 1,150 items at Columbia University Library. [illegible] Virginia Library has 248 pieces, the Historical [illegible] Wisconsin 30 items, the Maryland Historical Society [illegible], and the Woodrow Wilson Foundation has some mate[illegible]	The Library of Congress holds the former President's collection of academic materials and certain of his university documents and office items.
Warren G. Harding (1865–1923). President 1921–23.	There are 4 boxes in the Library of Congress, 2 boxes in the Ohio Historical Society and an undisclosed amount in the [illegible]ing Memorial Association, Marion, Ohio.	Certain items in the Harding collection will remain under seal until 2014.
Calvin Coolidge (1872–1933). President 1923–29.	The Library of Congress has 347 boxes, and the Forbes Library, Northampton, Mass., 79 volumes and boxes. Smaller collections are at Amherst College Library, the State Library of Massachusetts, and Tulane University Library.	
Herbert C. Hoover (1874–1964). President 1929–33.	The chief repositories are the Hoover Institution on War, Revolution, and Peace at Stanford University, and the Hoover Library at West Branch, Iowa. There are small collections at the University of Southern California, Yale University Library, Harvard College Library, and Princeton University Library.	
Franklin D. Roosevelt (1882–1945). President 1933–45.	There is a great and expanding collection in the Franklin D. Roosevelt Library at Hyde Park, N.Y. The Library of Congress had 1 volume and 2 boxes, and the Duke University Libraries have 26 items.	
Harry S. Truman (1884–1972). President 1945–53.	The central collection is at the Truman Library, Independence, Mo. There are a few papers in the Library of Congress.	
Dwight D. Eisenhower (1890–1969). President 1953–61.	The papers are housed at the Eisenhower Museum in Abilene, Kans.	
John F. Kennedy (1917–63). President 1961–63.	The papers of Kennedy, as well as others relating to his administration, will be housed in a memorial library at Harvard University.	
Lyndon B. Johnson (1908–73). President 1963–69.	The Johnson papers are at the Lyndon Johnson Library located at the University of Texas, Austin, Tex.	
Richard M. Nixon (1913–). President 1969–74.	The Nixon papers are being gathered in Washington at the National Archives for shipment to a Federal Records Center near San Clemente, Calif., where they will be under the joint supervision of the former President and the General Services Administration.	

[1] Information regarding papers depositories is generally drawn from Arthur Bernon Tourtellot. The Presidents on the presidency. Garden City, N.Y., Doubleday & Co., 1964, pp. 471–485; updating material supplied by the National Archives and Records Service.

[2] Information regarding purchases of Presidential papers is drawn from David Demarest Lloyd. Presidential papers and Presidential libraries. Manuscripts, v. 8, fall, 1955: 9–15.

Source: Harold C. Relyea, analyst, American National Government, Government and General Research Division, Sept. 24, 1974.

COUNTY OF ARLINGTON)
) ss
STATE OF VIRGINIA)

AFFIDAVIT

Personally appears before me Jack Alvin Albright, Major General, U.S. Army, who, being duly sworn deposes and says:

(1) I, Jack Alvin Albright was assigned as the Commanding Officer, White House Communications Agency from April 29, 1965 to June 12, 1969. In making this affidavit the following represents my best recollection of actions taken with respect to my assigned duties at the White House Communications Agency.

(2) At the time I assumed the responsibilities of this position I found that there were in existence facilities whereby the President or designated members of the White House Staff could record telephone conversations by a simple act of pushing a button on the telephone or throwing a separate switch which would activate a recording device thereby recording the conversations. My Agency was responsible for installing and servicing these facilities. Either at the end of each day or when the recording belt or tape was completed, a member of my Agency removed the recording and presented it to the secretary of the office concerned. Recordings were transcribed by secretaries in the White House Staff as directed by the office in which the recorders were installed. Recorders were installed or available on selected telephone lines in the office of the President and the office of his Appointments Secretary. In addition, this same capability was available at Aspen Lodge, Camp David, Maryland, the Main Ranch House at the LBJ Ranch in Texas, and the presidential offices in the Federal Office Building in Austin, Texas. These recorders were not equipped with any warning devices.

(3) The conference table in the Cabinet Room at the White House contained hidden microphones which could be activated at the conference table.

(4) In January 1969 President Johnson personally directed me to remove all recording devices from the Cabinet Room and from all telephones. This was accomplished prior to the departure of President Johnson from office.

/s/Jack Alvin Albright
J.A.A.

County of Arlington)
) ss
State of Virginia)

Subscribed and sworn to before me, a Notary Public for the County of Arlington, State of Virginia, this 17th day of July, 1973

/s/Rose C. Morris
Notary Public
My commission expires 20 April 1976.

[Caption Omitted in Printing]

AFFIDAVIT OF MILDRED STEGALL

State of Texas :
: ss.:
County of Travis :

MILDRED STEGALL, being duly sworn under oath, deposes and says as follows:

1. On June 30, 1975, I retired from the position of Program Officer in the Lyndon Baines Johnson Presiden-

tial Library where I had been employed since mid-1969. Prior to that time I was employed as an assistant to President Johnson during his term in the White House. I joined his Senate staff July 1, 1953, and worked continuously for him for the next nineteen and one-half years.

2. I worked with President Johnson in the preparation of his memoirs which he wrote after leaving office on January 20, 1969.

3. I served as personal custodian of a quantity of tape recordings which were recorded in the White House during President Johnson's term. These were principally recordings of telephone conversations between President Johnson and others made on a selective basis from a device activated manually on his secretary's desk outside the Oval Office. Some were recordings of meetings held in the Cabinet Room.

4. President Johnson made frequent use of these recordings during the preparation of his memoirs. On occasions when preparing portions of his memoirs in which the recordings reflected what he had said or done, he would request me to type a transcript of the recordings covering that period so that he could personally review them.

5. Also, when President Johnson considered the transcripts to be pertinent, he would permit members of his staff to review particular recordings. In most instances he dictated summaries of these recordings for the staff members' use in their work on the memoirs.

6. President Johnson on various occasions informed me he considered that ultimately these recordings would be of benefit to historians but that he was concerned that these recordings never be used to injure, embarrass or otherwise reflect adversely upon any person. He in-

structed me, in this regard, that if the recordings should be in my possession at the time of his death, I should deliver them thereafter to the Director of the Presidential Library and inform him that the recordings were to be deposited under seal and that the seal should not be broken nor the recordings reviewed for a period of fifty years from the date of President Johnson's death.

7. At the time of President Johnson's death, the recordings were in fact in my custody. As President Johnson had requested, I delivered them to Harry Middleton, Director of the Johnson Library, and informed him of the fifty years access restriction President Johnson had requested to be imposed.

/s/Mildred Stegall
MILDRED STEGALL

Subscribed and sworn to
before me this 29th day of
July, 1975.

/s/John M. Barr
Notary Public

[SEAL]
My commission Expires:
June 1, 1977

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN R. HUBBARD

I, JOHN R. HUBBARD, being duly sworn, hereby deposes and say:

1. I am the President of the University of Southern California located in Los Angeles, California and have served in that capacity since August 3, 1970.

2. Beginning in approximately March 1975, I engaged in a series of discussions with former President Richard M. Nixon concerning the disposition of the historical materials pertaining to his public career, including those relating to his tenure as President. During those discussions Mr. Nixon expressed to me his desire that these materials be preserved for history and that they be made available to scholars for research and analysis.

3. During these discussions I expressed to Mr. Nixon the University's willingness to establish a library to house Mr. Nixon's historical materials, and I informed him that the University was prepared to operate an appropriate archival facility upon the receipt and inventory of said materials.

4. Although it is the University's desire to include in the Library historical material pertaining to Mr. Nixon's entire public career, the material relating to his tenure as President, particularly those items now in the possession of the Government which are the subject of this lawsuit must, obviously, form the core of the Library. Considering the extraordinary historical significance of many of the events which occurred during Mr. Nixon's Presidency, the University firmly believes that the records behind these events should be made widely available for research and study. In this regard, my discussions with Mr. Nixon included reference to the White House tape recordings which, in the interim depository agreement with the General Services Administration (GSA), Mr. Nixon had agreed should be destroyed as of September 1984, or at the time of his death, after an initial five-year deposit. Mr. Nixon stated that he intended these recordings to be included among the materials transferred to the University and that he would take steps necessary

to eliminate the destruction provisions of that agreement in order to facilitate that expressed intention.

5. A copy of Mr. Nixon's public statement released in conjunction with the announcement of the plans for a presidential library at the University of Southern California is attached hereto as Exhibit A. A copy of the University's public statement in this regard is attached hereto as Exhibit B. The University is presently negotiating with Mr. Nixon through his attorneys as to the precise terms of the Agreement which will finalize these discussions.

/s/John R. Hubbard
J.R.H.

Date: 30 July 1975

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On July 30, 1975 before me, the undersigned, a Notary Public in and for said State, personally John R. Hubbard, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.
/s/[Illegible]
[SEAL]

[Caption Omitted in Printing]

PLAINTIFF'S BRIEF IN SUPPORT OF CLAIM FOR PERMANENT INJUNCTIVE AND DECLARATORY RELIEF

* * *

III.

THE PRACTICE OF PRESIDENTS AND OTHER CONSTITUTIONAL OFFICEHOLDERS IN EXERCISING INCIDENTS OF OWNERSHIP IN THE PAPERS AND EFFECTS OF THEIR OFFICES

A. *Presidents.*

Although every constitutional officeholder has treated the materials accumulated by him while in office as his own, the record demonstrating in what forms that ownership has been exercised is understandably best documented in the case thoroughly illustrates the unvarying practice of early Presidents and their families in exercising common law incidents of ownership, but it is informative to discuss a few examples here because they not only lend support to plaintiff's claim to the same rights but help explain the rationale that underlies the cutsom of ownership.

The papers of 23 Presidents are now found in the Library of Congress' presidential collections. Historians and scholars employed by the Manuscript Division of the Library have documented the history of the collections and have described how each President and his family disposed of the papers of his office.[21]

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[21]See Stipulation, dated July 31, 1975, concerning the Library of Congress' historical summaries describing its collection of presidential papers and effects [hereinafter "Stip. of Hist. Summ."].

1. *The practice prior to Hoover.*

George Washington.

At the end of Washington's second term, he instructed his personal secretaries to separate from among his papers those which he wished to leave for John Adams' use. The remainder were packed and sent to Mount Vernon. In the short time Washington lived after leaving office, he was able to review only a small portion of his papers. Upon his death, he bequeathed to his nephew, Bushrod Washington, "all the papers in my possession which relate to my civel [sic] and military administration of the affairs of this country, also, such of my private papers as are worth preserving."

From 1800 to 1833, the papers changed location several times, although the bulk of the collection remained in the hands of Chief Justice Marshall, who intended to write a biography of Washington. However, between 1824 and 1827, Washington's nephew negotiated with Jared Sparks to have him write an official biography of Washington. A contract was finally executed, and Bushrod Washington directed that the papers be sent from Marshall to Sparks.

In 1833, the Secretary of State requested of George C. Washington (nephew of the deceased Bushrod Washington and legatee of the papers) that he deposit the papers in the Department of State. Washington agreed to transfer title, with the exception of those "of a private nature, or which it would be obviously improper to make public." He reserved to Sparks the right of publication of the papers. On June 30, 1834, Congress appropriated $25,000 for the purchase of Washington's papers pursuant to the Secretary of State's agreement, and in 1849, it appropriated another $20,000 to purchase papers withheld earlier by Washington under the exceptions

originally agreed upon. (Stip. of His. Summ., *Index To The George Washington Papers,* Library of Congress (1964).

James Monroe.

When Monroe left the Presidency in 1825, he was in financial trouble, and looked to the use of his presidential papers as a source of revenue. He wrote an autobiography and one paper for Congress, using his papers in order to raise money. On January 27, 1828, a new method of obtaining income from the papers was suggested to Monroe by Nicholas Trist of Monticello. Trist suggested that Monroe pledge the income from future publication of his papers relating to Jefferson, in return for a loan (presumably from Trist, although this is unclear). Monroe replied: "Your suggestion as to the sale of my papers, or pledge of them, merits attention."

Upon his death, Monroe entrusted his papers to his son-in-law, Samuel Gouverneur of New York. The legacy required Gouverneur to divide equally with Monroe's two daughters the income from any publication that Gouverneur might undertake. Gouverneur never did publish the papers himself, but in 1844 he transferred the papers to Henry O'Reilly for publication, dividing the profits pursuant to a complicated settlement with Monroe's estate. On June 30, 1850, Congress appropriated $20,000 for the purchase of Monroe's public papers; his private papers were acquired later. (Stip. of Hist. Summ., *Index To the James Monroe Papers,* Library of Congress, 1963.)

Andrew Jackson.

President Jackson, shortly before his death, placed his collection of papers in the hands of Amos Kendall, a close friend, with the following injunction: "On the subject of my papers—You are to retain them so long as

you think necessary [sic] to use them—Should you die they are to pass forth into Mr. [Francis P.] Blair's hands—I have full & unlimited confidence in you both, that my papers will be safe in your hands & that they never will be permitted to be used but for a proper use." After Jackson's death, Andrew Jackson, Jr., contrary to his father's earlier statement, began to collect all of his father's papers and place them in the custody of Mr. Blair. Thus, Francis Blair controlled access to most of the Jackson papers for several years, granting access to such interested persons (e.g., Jackson biographers) as he might deem fit. Kendall retained a substantial number of Jackson papers until his death. After the deaths of Blair and Kendall, the Jackson papers were separated and dislocated, falling into different private hands for several years.

On February 29, 1884, the Senate resolved to "inquire into the propriety and expediency of purchasing said collection of papers from General Jackson's legal heirs . . ." A legal struggle ensued between the heirs of Francis Blair, who had possession of many of the Jackson papers, and the heirs of Andrew Jackson, to determine ownership in the bulk of the papers. On October 29, 1890, the Supreme Court of the District of Columbia dismissed the Jackson heirs' bill of complaint. In 1930 the Library of Congress received deposit of and title to the Blair family's collection of Jackson papers. Later, in 1911 and 1932, two purchases of Jackson papers were made, amounting to $18,000. The Library of Congress later purchased other smaller collections of Jackson papers from different persons including heirs of the former president. (Stip. of Hist. Summ., *Index To The Andrew Jackson Papers,* Library of Congress 1967.)

John Tyler

Tyler took great care in preserving his papers after his presidency. In 1859, he executed a will bequeathing to his sons and son-in-law "for revision and publication if they shall think proper all such of my papers as relate to my own times . . . or to public affairs." To his wife he left all his private papers. Most of his papers were either stolen or destroyed during the Civil War. The small collection presently in the Library of Congress was gathered by Tyler's son, Lyon, and sold for $1,000 to the Library in 1919. (Stip. of Hist. Summ., *Index To The John Tyler Papers,* Library of Congress, 1961.)

James K. Polk.

Upon leaving office in 1849, Polk transferred Administration papers to his Tennessee home and to various departments of government. Polk died shortly after leaving office, and the papers sent to Tennessee remained in Mrs. Polk's possession with two exceptions, until her death in 1891. The two exceptions were for transfer of the papers to an official biographer and to George Bancroft who also undertook a biography of Polk. Both times the papers were returned to Mrs. Polk. Upon her death, Mrs. Polk left the papers to her niece. In 1902, the Chicago Historical Society purchased Polk's diaries as well as some 300-400 letters from her; in 1903 the Library of Congress purchased the bulk of the collection, approximately 10,000 documents. Shortly thereafter, the Chicago Historical Society sold its holdings to the Library of Congress. Finally, in 1910, the Library acquired the remainder of the collection. (Stip. of Hist. Summ., *Index To The James K. Polk Papers,* Library of Congress 1969.)

Abraham Lincoln

Immediately after Lincoln's assassination, Justice David Davis at the request of Robert Lincoln ordered the President's files packed and shipped from the White House. Two aides to the President then removed the papers within two weeks, and transferred them to the National Bank in Bloomington, Illinois. Between 1865 and 1874 it is unclear whether anyone had access to the papers in Bloomington. In 1874, however, Robert Lincoln ordered the collection transferred to J. G. Nicolay in Washington, D. C. for use by Nicolay in writing the official Lincoln biography. The papers remained in Nicolay's possession until 1901, when he died, and then were transferred to the State Department. Robert Lincoln retook possession of the papers in 1905 and only in 1919 did he transfer possession to the Library of Congress. On January 23, 1923, Lincoln deeded title in the papers to the Library of Congress, upon the condition that access to the papers be totally restricted until twenty-one years after Robert's death. Robert died July 26, 1926. (Stip. of Hist. Summ., *Index To The Abraham Lincoln Papers,* Library of Congress 1960).

Andrew Johnson.

Johnson died in 1875, leaving to his eldest daughter, Martha Johnson Patterson, the materials he had taken from the White House. During her years as sole possessor of the papers, she granted very few of the many requests for access. In 1890, she allowed Laura Carter Holloway to use the papers for a biographical sketch of Johnson in another book and in 1900, Holloway and David DeWitt were allowed to use the papers for a biography of Johnson. Martha Patterson died in 1901, and bequeathed the papers to her son, Andrew Johnson Patterson. In

1904, the Library of Congress purchased the papers from him for $7,500. (Stip. of Hist. Summ., *Index To The Andrew Johnson Papers,* Library of Congress 1963).

William McKinley.

McKinley did not provide for disposition of his papers in his will. Instead, a co-executor of his estate, George Cortelyou, assumed responsibility for them. Cortelyou intended to deposit the papers in the Library of Congress in 1905, but for various reasons deferred deposit until 1935. After deposit, he controlled access to the collection until 1940; his son, George, Jr., controlled access until 1954. (Stip. of Hist. Summ., *Index To The William McKinley Papers,* Library of Congress 1963).

William Howard Taft.

President Taft left the Office of the President on March 4, 1913, and assumed residence in New Haven, Connecticut. Once established, he directed the executive clerk at the White House to send his presidential papers to New Haven. All of his papers were not sent, however. In 1915 the executive clerk discovered a group of Taft papers which had been intermixed with the White House Office Files, and immediately dispatched the newly-discovered collection to New Haven. Again, in late 1924, extensive office files of the Taft Administration were discovered in the White House, separate from the General Office Files of the White House Office, and deposited in the Library of Congress at then Chief Justice Taft's request. Earlier, possession of the collection of Taft papers which had been sent to New Haven had been acquired by the Library of Congress. Until 1952 the Taft papers were only on deposit in the Library of Congress; in February of that year the deposit was converted to a gift by Robert A. Taft, Charles P. Taft, and Helen Taft

Manning. Until 1960, none of the papers could be consulted without the consent of the Taft family. (Stip. of Hist. Summ., *Index To The William Howard Taft Papers,* Library of Congress 1972).

Woodrow Wilson.

Despite a request to President Wilson by the Library of Congress that his papers be transferred to the Library immediately following termination of his Presidency, Wilson took his papers with him. A second request for deposit of the papers in 1922 led to a similar refusal. President Wilson replied to the Library: "I am not willing yet to make any such disposition of my papers. I think it best to leave the matter for my last will and testament."

Shortly after Wilson's death in 1924, the Library renewed its request for deposit of the Wilson papers, this time to Mrs. Wilson. The request assured Mrs. Wilson that whatever her wishes regarding treatment of or access to the papers, the Library would respect them:

> "[T]he Library desires the papers as a deposit from you, to be held subject to your orders, to be withdrawn for biographical purposes at your pleasure. The papers would not be open to inspection except on your order. If you so will they will simply be stored, without arrangement of classification. You may treat the Library as a storage warehouse, thereby insuring safety from fire and theft. Meantime we would endeavor to secure originals of the letters that are now in private hands . . ."

Mrs. Wilson replied that she did not wish to deposit the papers at that time, although her desire was to deposit them eventually with the Library. After a biographer had been appointed, Mrs. Wilson reopened negotiations with the Library in 1929 for deposit of the papers. After several months of negotiations, the Library and Mrs.

Wilson agreed to a memorandum of conditions for deposit, which specified several restrictions on access as well as the right of the donor to withdraw the collection from deposit. As the collection was gradually transferred from the biographer to the Library, the public began to gain access to the Wilson papers. All requests for access, however, were referred to Mrs. Wilson for clearance until her death in 1961. (Stip. of Hist. Summ., *Index To The Woodrow Wilson Papers,* Library of Congress 1973).

In sum, although different Presidents disposed of the materials of their offices in different ways, each President without exception took with him the papers of his office or otherwise provided for their preservation or disposition as he deemed appropriate. Moreover, in nearly every case the President or his heirs exercised some incident of ownership in addition to simply protecting the confidentiality of the material itself. Several Presidents bequeathed their papers and effects to their family. (Washington, Monroe, Tyler, Andrew Johnson). Others or their heirs used or authorized the use of their materials to further literary interests. (Washington, Monroe, Polk, Lincoln, Andrew Johnson, Wilson). Some presidential materials were ultimately donated to private collections or to the government. (John Adams, John Quincy Adams, Jackson, Buchanan, Fillmore, Harrison, McKinley, T. Roosevelt, Taft, Wilson, Hayes, Garfield, Cleveland). Some were sold for substantial sums. (Washington, Jefferson, Madison, Monroe, Jackson, Tyler, Polk, Andrew Johnson). Others were simply destroyed. (Van-Buren, Fillmore, Pierce, Harding). (Broderick Aff).

Intervenor-defendants, relying upon the Affidavit of Julian P. Boyd, editor of the Thomas Jefferson Papers, apparently contend that all Presidents did not consider their public papers to be private property. The affidavit, which deals only with Jefferson's Presidency, however,

shows solely Jefferson's concern for the historical preservation of his papers which is not unmindful of the identical concern for preservation exhibited and shared by Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson and Nixon. His description of the steps taken by Jefferson to deposit official papers in the appropriate departments or agencies could be comparable, for example, to the steps Mr. Nixon undertook to institutionalize the files of the National Security Council, or the general practice in government agencies to retain all records generated or received by them including all communications with the White House. The rather abrupt conclusion of the affiant in paragraph 5 that Jefferson "considered it to be self evident" that "public records are public property" is—as admitted by affiant—unsupported by any expression by Jefferson.

2. *The practice since President Hoover.*

The collections of papers of early Presidents reveal indirectly that each took with him those items he accumulated while in the White House; there is direct evidence of the fact, however, since the Administration of President Hoover. It is provided by William J. Hopkins, a career White House employee who served every President from Hoover to Nixon. As a general matter, Mr. Hopkins expressed the transition practice as follows:

> "At the end of each Presidential Administration under which I served, all of the files maintained by the Central File Room, as well as those maintained separately by the President's staff and his personal secretary, were packaged and shipped to a designated location selected by the retiring President or his representative. The only files which remained for the incoming Administration were the files of the Administrative Office, the card file in the Records Office, and a small 'precedent file' maintained in Central Files." (Hopkins Aff. 6)

In reference to specific transitions the following occurred.

President Roosevelt.

Portions of President Roosevelt's materials had been sent to his library in Hyde Park during his term in office. Mr. Hopkins describes the handling of those files which remained in the White House Office at Roosevelt's death.

> "Because of the death of President Roosevelt during his term in office, the packing and shipping of his files was less well prepared than during the changeover from President Hoover to President Roosevelt. President Roosevelt had already shipped to Hyde Park for storage some of his files which had become inactive. All of the files that remained in Central Files were packed in large boxes and sent to the National Archives within 72 hours of President Roosevelt's death. Nothing was left in Central Files except the small precedent file. The incoming mail which had not yet been acknowledged at the time of President Roosevelt's death was left unanswered, bosed for transfer to the National Archives, and for subsequent forwarding to Hyde Park. Although President Roosevelt's material was in the Archives building temporarily, access to it was controlled by President Roosevelt's Private Secretary, Grace Tully, and later by a committee consisting of Grace Tully, Judge Samuel Rosenman, and others whom I do not presently recall.

President Roosevelt, like all other Presidents, maintained his own personal file which was not comingled with the files in Central Files. Grace Tully had responsibility for and control over access to this file, which consisted of materials more political or more sensitive than the materials normally sent to Central Files. Upon President Roosevelt's death, this file was sent to the Archives

as well, where Miss Tully, having sole control over access, personally worked with the file for several months before its eventual transfer to the Roosevelt Library in Hyde Park.

The files of President Roosevelt's staff that were not maintained in Central Files were also packed and sent to the National Archives Building with the rest of the Presidential materials at the time of Roosevelt's death. Because of the abrupt change of Administrations, some of the staff members worked in the White House on President Truman's staff for an interim period, and maintained those materials in their files which were active at the time of the changeover. Shortly, however, even those materials were forwarded for inclusion among President Roosevelt's materials." (Hopkins Aff. 9-10).

President Truman.

At the close of the Truman Administration, approximately 1,600 file drawers of Presidential materials were sent to Missouri at President Truman's request. Again, Mr. Hopkins recalls the incident:

"We used old file cases found in the attic of the Old Soldier's Home in Washington, D. C. to package and ship these materials to Kansas City. President Truman's personal file (which included daily summaries sent to President Truman from the National Security Council) were sent to a bank building in Kansas City where they were organized and maintained by President Truman's secretary, Rose Conway. It is my understanding that President Truman maintained control over this category of his files until his death." (Hopkins Aff. 10.)

President Eisenhower.

The first-hand account of President Eisenhower's departure from the White House is provided by his son, John S. D. Eisenhower, who personally supervised the collection and transfer of his father's papers and effects.

"Near the conclusion of my father's second term as President, I began the process of arranging for the disposition of all the materials generated by or retained within the Office of the President during his Administration. Through conversations with President Eisenhower and others, I was aware that prior to the time my father arrived in the White House on January 20, 1953, the prior administration had removed from the White House and Executive Office Building offices all staff and central files pertaining to the work of that administration. My father informed me that the only material left for him was a single page of instructions to be used in the event of national crisis and National Security Policy Documents. All other files had been removed. We were informed that this same general procedure had been followed by every prior administration, and we determined that we would adopt the same policy.

To begin the task of packaging the presidential materials for shipment from the White House, White House Staff Secretary, A. J. Goodpaster, prepared a memorandum to be sent to all members of the White House staff directing them to package at least 75 percent to 90 percent of their individual files and deliver them to a temporary storage area preparatory to transfer to Abilene, Kansas. This memorandum was circulated approximately December 15, 1960, and the request deadline for packaging and transfer was December 23. On January 11, 1961, a second memorandum was sent by Wilton Persons to all staff members reiterating the directive for

packaging of the Eisenhower Presidential files. In this memorandum, the staff was told to '. . . clear out every last possible paper (other than strictly personal) from their files!!!' and to box, label, and place them in the custody of GSA by the end of the day, January 16. Nothing was to be left in any office that was not 'completely essential.'

With regard to the material, if any, that was to be left for the incoming administration, the memorandum directed, that such items should be 'cleared with the President' through the office of staff secretary.

On the afternoon of January 19, 1961, within hours of the inauguration of John F. Kennedy, I personally toured the staff offices and gathered several storage cabinet safes that had not previously been prepared for shipment. Apart from these safes, there was no files nor other items of Presidential materials left for the incoming administration.

With respect to the President's personal files, they had previously been packaged for shipment to President Eisenhower's future office in Gettysburg. The only material left by President Eisenhower for President Kennedy was a sachel containing a series of orders and instructions to be of assistance in the event of nuclear attack or other national crisis." (Eisenhower Aff 4-6.)

President Kennedy.

The unexpected death of President Kennedy and the resulting abrupt transition to President Johnson's Administration posed some of the same problems faced by Mr. Hopkins earlier in the Roosevelt-Truman transition and later by other staff members in the Nixon-Ford transition.

"When President Johnson succeeded to the Presidency there had been no opportunity for

advance planning regarding disposition of President Kennedy's files. Many of President Kennedy's staff continued on for the time being as members of President Johnson's staff. Contrary to the rather immediate action in removing the files at the time of President Roosevelt's death, it was deemed necessary to retain most of President Kennedy's files at the White House for the time being for use by the Staff. In order to insure during this interim period that President Kennedy's files be kept inviolable with no comingling, at the direction of McGeorge Bundy, (a member of President Kennedy's staff who remained on with President Johnson for a time) I prepared a memorandum providing instructions to the staff on the handling of the files during the period when the files of both Presidents were active within the White House Office . . . This dual operation worked itself out in a matter of months and eventually all of President Kennedy's files were removed from the White House Office in accordance with the pattern of his predecessors." (Hopkins Aff. 12.)

Unlike all prior Presidents, however, President Kennedy had generated while in office, in addition to the usual papers and effects, dictabelt recordings of telephone conversations and tape recordings of meetings between himself and others. These were removed from the White House after his death. To date only one has been donated to the United States.[22]

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[22]The assistant director of the Kennedy Library states:

> There are 68 dictabelts of telephone conversation and 125 magnetic tapes of meetings between President Kennedy and others which are or have been physically stored in the Kennedy Library but have not yet been turned over to the library. Consequently, the library staff has only very limited knowledge of their nature and extent. Among the material which has been

[footnote continued]

President Johnson

President Johnson, perhaps more than any of his predecessors, other than Roosevelt, began early to plan for the creation of his library.

> "President Johnson was very much concerned with the preservation of his Presidential materials. I can recall instances in which he discussed with me and others concerning this matter. I recall one conversation in which President Johnson stated in effect that when a staff member comes aboard he comes with his hat in his hand and he should leave the same way. As a result of President Johnson's concern, frequent efforts were made to contact all staff members to advise them as to the separation of Presidential from their own personal materials; a memorandum providing guidelines for this separation was attempted but never distributed." (Hopkins Aff. 12-12.)

When Johnson's term ended, as in each prior transition, the same White House Office files were packaged and transferred to the President's designated location (this time the Federal Building in Austin, Texas). However, in order to provide a more complete history of his Administration at his presidential library, Johnson went beyond the practices of most prior Presidents in at least two respects. First, like Kennedy, during his term in office Johnson had a tape recording system installed with which he and certain members of his staff could

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donated to the library as a part of President Kennedy's papers is one tape of two telephone conversations between President Kennedy and Prime Minister Macmillan (October 1962). This tape (and transcript) is classified as top secret.

See Stipulation, dated Aug. 19, 1975, concerning the testimony of the Directors of the Presidential Libraries [hereinafter Stip. of Dir. Test."] Exhibit G, at 5-6.

selectively record telephone conversations in various offices at the White House, Camp David and Austin, Texas. In addition, a recording system of hidden microphones had been installed in the Cabinet Room. (Albright Aff. 1-2.) Approximately eight cubic feet of recorded reels of those conversations were transferred to Texas as part of the Johnson presidential materials.[23] (Stip. of Dir. Test., Exhibit F, at 1.) Second, during the last few months of Johnson's term, members of his staff collected large quantities of microfilm of records from the various federal agencies pertaining to the "Great Society" and other programs with which President Johnson was most closely affiliated. These microfilms were also transferred to Texas for inclusion in the Johnson Library. (Nesbitt Dep. 66-67.)

President Nixon

In keeping with the developing tradition of his immediate predecessors, President Nixon's staff after assuming office, began plans for the establishment of a presidential library which would house Nixon's presidential papers at the conclusion of his term. A private foundation was created to select the site and to raise the funds for the structure that would be donated to the government under the Presidential Libraries Act. (Nesbitt Dep. 58-60.)

The plans for a presidential library were far from complete when on August 9 President Nixon resigned

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[23]The tape recordings of President Johnson's conversations which have been placed in the Johnson Library under a fifty year access restriction were utilized extensively by Mr. Johnson in preparing his memoirs. An account of this usage, and the steps President Johnson took to safeguard the confidentiality of these records is contained in the Stegall Affidavit, Ex. G, Pl's. Supp. Evid.

from office. In leaving, he instructed his staff to arrange for the collection and transfer of his presidential materials to California. This task fell primarily upon three people: Jerry Jones, the White House Staff Secretary; Leonard Garment, Counsel to President Nixon; and John Nesbitt, who had headed the Office of Presidential Papers in the White House during most of President Nixon's term and who had coordinated the planning for the presidential library. (Nesbitt Dep. 38-39; Pl's Aff. 2).

Shortly after the resignation these three individuals met to discuss the arrangements for disposition of the Nixon materials. They agreed, that the transition should be carried out in such fashion that the needs of the incumbent Administration for access to Nixon presidential materials could be accommodated. Mr. Nesbitt, recognizing the similarity of circumstances to the abrupt Kennedy-Johnson transition, obtained a copy of the Hopkins memorandum circulated after Kennedy's death instructing staff members to segregate immediately their Kennedy materials. (Matthews Aff. Exhibit C) This memorandum formed the basis for the Jones memorandum sent to all members of the White House Office. (Matthews Aff. Exhibit D) However, one significant change was made. In the Jones memorandum, each staff member was instructed to make copies of any of the Nixon materials he might need for ongoing government business. The copies were to become part of the Ford presidential materials. The remainder of the materials were to be packed for shipment to President Nixon. (Nesbitt Dep. 50-44.) In all other respects the packing and preparation of the Nixon presidential materials proceeded as it had in the close of 36 prior Administrations, until it was called to a halt by the incumbent Administration at the request of the Special Prosecutor.

B. *Supreme Court Justices.*

As we have noted, the matter of constitutional officeholders' ownership of the materials of their respective offices is by no means limited to Presidents. The following are merely illustrative of the fact.

The Library of Congress presently contains several collections of papers donated or deposited by Justices of the Supreme Court, including Justices Brennan and Douglas and former Justices Black, Hughes and Frankfurter. In placing their materials in the Library of Congress, members of the Court and their families, like former Presidents and their families, have taken steps to preserve the confidentiality of their materials and have exercised ownership rights recognized under common law.[24]

William J. Brennan.

Between 1967 and 1974, Justice Brennan donated to the Library of Congress 55,000 documents covering his work on the Court from 1956 to 1970. The collection includes Memoranda for Conference, Bench Memos, case files containing memoranda written to other Justices, personal notes on the case, briefs, and memoranda from law clerks. In making this donation, Justice Brennan has expressly reserved for his lifetime the literary rights to his unpublished donated writings. He has also prohibited access to his legal files and correspondence files except with his personal permission. The Justice's "Personal Annual Reviews of the Terms' Work" is closed to access until the death of all Justices participating in the decisions reviewed.

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[24]The following summaries are based upon the Affidavit of John C. Broderick and attachments.

William O. Douglas.

Justice Douglas has donated personal correspondence and Supreme Court papers covering 1939 to 1952. The content in Justice Douglas' papers is similar to that of Justice Brennan. Justice Douglas has forbidden access to his donated files during his life.

Hugo L. Black.

Between 1972 and 1974, the Hugo Black family donated to the Library of Congress papers from Justice Black's entire career, 1898-1971, including his Supreme Court papers. The latter papers include correspondence, assignment and conference lists, opinions in manuscript, nearprint and printed form, memoranda, research materials, printed matter, vouchers, financial materials, and clippings. Also included in the collection are dictaphone recording, phonodiscs, magnetic tapes, and motion pictures. Justice Black directed that his conference notes be destroyed after his death, which was done.

The terms of the donation provide that the literary rights will be dedicated ultimately to the public, but are reserved to members of the Black family during the lifetime of each member. Access to the files requires permission of Mrs. Black and Hugo L. Black, Jr. If access is granted, the researcher cannot publish or write for publication without permission of the same two persons. Access to the Supreme Court files is closed until the death or retirement of all Justices who were active during the time of the decision being accessed.

Charles Evans Hughes.

Mrs. Hughes in 1952 donated to the Library of Congress a large body of correspondence of Chief Justice Hughes. This donation includes correspondence relating

to both Chief Justice Hughes' public career and personal life. No case files are included such as are in the donations of other Supreme Court Justices. Originally access to the collection was prohibited except upon permission of Chief Justice Hughes' daughter. As of January 1, 1975, no restrictions remain. However, literary rights are reserved to Chief Justice Hughes' daughter.

Felix Frankfurter.

Justice Frankfurter placed the bulk of his papers in three different depositories: his Supreme Court papers and his correspondence relating to the Sacco-Vanzetti case were given to Harvard Law School; his papers relating to the Zionist movement are at the Hebrew University in Israel; the ramainder of his papers, covering the period from 1906 to 1965, were placed in the Library of Congress in several installments beginning in May, 1967. A sizeable portion of the Library of Congress collection was stolen in 1973. (Washington Post, August 10, 1975. Sec B, p.1). Literary rights in the unpublished writings of Justice Frankfurter have been dedicated to the public, except that these rights are reserved for a period of 16 years from the date of each paper. (Register of the Papers of Felix Frankfurter in the Library of Congress (Library of Congress 1971), at 4-7).

C. *Congressmen.*

Because of the sheer number of Members of Congress it is impossible to discern a pattern for the disposition of their materials. However, it can be said that uniformly each member takes with him the papers and effects of his office as he desires and disposes of them as he sees fit. The Library of Congress holds the papers of several Congressmen, although most such collections are pri-

vately held. For example, the papers of Sam Rayburn are located in the Sam Rayburn Library at Bonham, Texas; the papers of Estes Kefauver are in the University of Tennessee Library at Knoxville, Tennessee; those of Everett M. Dirksen are stored principally at the University of Illinois. Among the Library of Congress holdings are the papers of Emanuel Celler and the papers of Robert A. Taft. Access to collections is controlled respectively by Mr. Celler and Mr. Taft. In addition, Mr. Taft reserves the right to review quotations for matters of taste. (Broderick Aff. 1-2.)

[Caption Omitted in Printing]

STIPULATION

On June 11, 1975, Plaintiff, by counsel, sent letters to the Directors of each of the existing Presidential Libraries posing various questions concerning the nature of certain of the materials deposited in each Presidential Library and the operation of each Library as it related to issues pending in this litigation. Responses by the Directors to these questions were received from the Government in late July.

With regard to these responses, it is hereby stipulated by and between the parties that the following persons, if called upon to testify in this litigation, would testify upon direct examination, and subject to all appropriate objections, according to the responses in the letters attached as exhibits to this stipulation:

1. Thomas T. Thalken—Exhibit A
2. William R. Emerson—Exhibit B
3. Benedict K. Zobrist—Exhibit C
4. John E. Wickman—Exhibit D

5. Dan H. Fenn, Jr.—Exhibit—E
6. Harry J. Middleton—Exhibit F

On July 29, 1975, Plaintiff submitted to the government defendants additional questions to be posed to the Directors of the Libraries. On August 12, 1975, the government defendants, after receiving answers to the questions posed, incorporated those answers in a letter signed by government counsel, attached to this Stipulation as Exhibit G.

With regard to Exhibit G, it is hereby stipulated by and between the parties that if called to testify in this litigation, upon cross-examination the Directors would have testified subject to appropriate objection, according to the answers given in Exhibit G.

/s/Irwin Goldbloom
IRWIN GOLDBLOOM
DAVID J. ANDERSON
Department of Justice
Tenth & Pennsylvania Ave., N.W.
Washington, D.C. 20530

ATTORNEYS FOR DEFENDANTS
Administrator of General
Services and United States
of America

/s/Henry S. Ruth
HENRY S. RUTH

/s/Richard J. Davis
RICHARD J. DAVIS
Office of Watergate Special
Prosecution Force

/s/Mark J. Spooner
ROBERT HERZSTEIN
ANDREW S. KRULWICH
MARK J. SPOONER
1229–19th Street, N.W.
Washington, D.C. 20036

ATTORNEYS FOR INTERVENOR–
DEFENDANTS
Reports Committee for Freedom
of the Press, et al.

/s/Herbert J. Miller, Jr.
HERBERT J. MILLER, JR.
R. STAN MORTENSON
2555 M Street, N.W.
Washington, D.C. 20037

ATTORNEYS FOR PLAINTIFF
Richard M. Nixon

/s/Andra N. Oakes
ANDRA N. OAKES
2005 L Street, N.W.
Washington, D.C. 20036

ATTORNEY FOR INTERVENOR–
DEFENDANTS
Jack Anderson, et al.

EXHIBIT A

[SEAL]

July 17, 1975

R. Stan Mortenson
Miller, Cassidy, Larroca & Lewin
2555 M Street, N.W., Suite 500
Washington, D.C. 20037

Dear Mr. Mortenson:

1. There are no restricted materials in Mr. Hoover's Presidential Papers.

2. Since the Hoover Papers were opened to research in 1966, no person has been denied access to the Hoover Presidential Papers.

3. Upon the death of Herbert Hoover, Jr. and Lewis Strauss, replacements to the Coordinating Committee were appointed by Allan Hoover, in accordance with his father's wishes as expressed in Herbert Hoover's letter of December 15, 1960 to GSA Administrator, Franklin Floete. Allan Hoover has the sole authority to make such appointments.

   Mr. Duane Arnold replaced Herbert Hoover, Jr., and Mr. David Packard replaced Lewis L. Strauss. The five members of the Coordinating Committee are listed on the attached page.

4. No Presidential Papers have been restricted by the Coordinating Committee. The only papers now restricted are private and personal papers not related to Mr. Hoover's government service.

   The Coordinating Committee during my tenure as director has functioned only to remove restrictions remaining on the Post Presidential Papers of Herbert Hoover.

5. From 1933 to 1966 Mr. Hoover's papers were not generally available to the public without a grant of access by former President Hoover. During this period a number of scholars were granted access by Mr. Hoover. The following publications were based, wholly or in part, on the Hoover Presidential Papers:

1934. *The State Papers of Herbert Hoover,* by William Starr Myers.

1936. *The Hoover Administration,* by William Starr Myers and Walter Newton.

1937. *The Hoover Policies,* by Ray Lyman Wilbur and Arthur M. Hyde.

1940. *The Foreign Policies of Herbert Hoover,* by Wm. Starr Myers.

1951. *Herbert Hoover's Latin American Policy,* by Alexander DeConde.

1957. *American Diplomacy in the Great Depression,* by Robert H. Ferrell.

1960. *Herbert Hoover and Germany,* by Louis H. Lochner.

In 1956, Professor E.E. Robinson, of Stanford University, was granted access to the Presidential Papers by Mr. Hoover, but he did not publish.

6. I do not have any knowledge of, nor do I have any reason to believe, that any part of the Hoover Presidential Papers were retained or destroyed by Mr. Hoover or any members of the Hoover family.

Sincerely,
/s/Thomas T. Thalken
THOMAS T. THALKEN
Director

COORDINATING COMMITTEE
Herbert Hoover Presidential Library

DUANE ARNOLD
Iowa Electric Light & Power Co.
P. O. Box 351
Cedar Rapids, Iowa 52406

WILLIAM B. COBERLY, JR.
626 Wilshire Boulevard
Los Angeles, California 90017

ROBERT K. GOODWIN
506 Hubbell Building
Des Moines, Iowa 50309

ALLAN HOOVER
25 Field Point Road
Greenwich, Connecticut 06830

DAVID PACKARD
1501 Page Mill Road
Palo Alto, California 94304

EXHIBIT B

[SEAL]

July 23, 1975

Mr. R. Stan Mortenson
Miller, Cassidy, Larroca and Lewin
2555 M Street, N.W.—Suite 500
Washington, D.C. 20037

Dear Mr. Mortenson:

After consultation with and on the advice of Counsel of the Department of Justice assigned to C.A. #74-1852

(Richard Nixon v. Administrator of General Services *et al.*) I write in response to your letter of June 11, which raises questions concerning the actions of President Roosevelt and his family in the disposition of his Presidential materials.

I should make the following observations. I have held this position only since July 1, 1974. My predecessor died in November, 1973. The man who was Director longest (from 1948 to 1961) died in early June. The most senior member of our present staff concerned with such matters dates back only to 1964. Thus to the extent that answers to your questions depend on the memory of individuals there are, unfortunately, gaps in our array. We have made the fullest search of our files possible in the time available. The information I have provided below is accurate as far as it goes but I should caution you that I cannot affirm on the basis of so hurried a search that it is absolutely comprehensive. I will answer your questions in order:

1. Have there been any requests for access to restricted presidential materials of the Roosevelt Administration by officials of subsequent administrations or Members of Congress? If so, please state the circumstances surrounding such requests and the disposition thereof. Please furnish any letters, memoranda or other documents evidencing or relating to such requests and the disposition of such requests.

There are two types of restricted materials among President Roosevelt's papers. One category of restricted materials is that of security-classified documents. Such materials are restricted under the authority of various Executive Orders. The second type is donor-restricted, those materials which, for varying periods of time, are closed in accordance with the instructions of the donor or his agents. In the case of the Roosevelt papers,

responsibility for closing certain documents was assigned to a Committee of Three (Samuel Rosenman, Harry Hopkins and Grace Tully; see Roosevelt memorandum, July 16, 1943). The Committee of Three, reduced by the death of Mr. Hopkins, did not issue its guidelines until November 17, 1949 (see Rosenman and Tully to Grover). The bulk of the Roosevelt collection prevented Rosenman and Tully from making a personal examination, so it was arranged for the Library's archives staff to close such documents as fell within the seven categories enumerated by Rosenman and Tully.

There have been a number of requests for access to security classified documents among the Roosevelt papers by officials of subsequent administrations. A list of those having access to such materials would include President Harry S. Truman, officials of the Department of State, Department of the Army, Department of the Air Force, the Central Intelligencd Agency, and the National Security Agency (see copies of correspondence marked "A".) This listing is merely illustrative, not comprehensive. As to donor-restricted materials I have knowledge of only one instance of access being provided to them. This involved a confidential report to President Roosevelt in 1933 which was requested in 1953 by Mr. Charles F. Willis, special assistant to President Eisenhower, and was provided to him. Correspondence bearing on this matter is attached (Willis, Kahn, Grover, August and September, 1953). I have no knowledge of the grounds for this request or the further disposition of this material.

2. Have any persons other than government employees or officials requested access to the Roosevelt presidential papers and been denied acccess by Mr. Roosevelt or members of his family? If so, please state the circumstances and furnish any documents evidencing or relating to such a request and denial.

The answer to this question is in the negative. The question of denying or permitting access to restricted documents in the Roosevelt papers is properly the responsibility of the Director of the Library. The family of Franklin Roosevelt has not involved itself in these matters nor could it be allowed to do so under the Library's procedures governing access.

3. Since the conclusion of President Roosevelt's term in office, have any members of his family or other persons been given access to restricted materials of the Roosevelt Administration which are not (or were not at the time of such access) generally available to other members of the public? If so, please state the name of that person or family member, whether he or she used such access for purposes of research preliminary to publication of writings, and the name of the person who authorized such access.

Elliott Roosevelt, in collaboration with Joseph P. Lash, produced a four-volume work, *F.D.R.: His Personal Letters* (N.Y.: 1947-1950). We have no evidence that either of them had access to papers in the Library at that time not available to others.

Many non-official researchers, several hundred at the least, have received permission to examine security-classified material in the Roosebelt Library. Each had received permission from the agency of origin or jurisdiction to examine that agency's security-classified documents in the Roosevelt papers. During 1971, to cite

an example, our records show that 45 non-official researchers received 56 clearances to examine State (41), Army (10), Navy (4), and Air Force (1) classified material.

4. Did Mr. Roosevelt or any member of the Roosevelt family retain or dispose of any of the presidential materials, official or personal, of the Roosevelt Administration?

Certain letters among the Presidential materials at the time of Mr. Roosevelt's death were deemed to be personal family correspondence and were turned over to the Roosevelt family by the Library in 1948 (memorandum, Edgar B. Nixon, June 18, 1948). This material was returned to the Library from the five children of President and Mrs. Roosevelt since that time. This material includes correspondence between the President and his parents, wife and children (Kahn to Halsted, November 24, 1954).

4. Continued . . . Did the Roosevelt Library, at its inception, receive possession of all the presidential materials of the Roosevelt Administration? If not, please identify the custodian of those papers during the time in which they were not included in the Roosevelt Library and describe the circumstances under which the Library received custody of the materials.

The building which houses the Roosevelt Library was completed in 1940. Roosevelt began early in 1941 to transfer some of his earlier correspondence to the Library but the bulk of his White House papers had not been so transferred at the time of his death in 1945. After his death his White House papers were moved to the National Archives building where they remained in storage until December, 1946, at which time they were transferred to the Roosevelt Library to await legal decisions as to their ownership. However, there was a notable exception to

this. The "Map Room" files, which contain the diplomatic and military papers relating to the President's conduct of World War II, were retained in Washington on the instructions of President Truman and were not transferred to the Library until November, 1951.

I hope that this information will be helpful to you.

Very sincerely yours,

/s/William R. Emerson
WILLIAM R. EMERSON
Director

EXHIBIT C

[SEAL]

UNITED STATES OF AMERICA
General Services Administration
National Archives and Records Service
Harry S. Truman Library
Independence, Missouri 64050

July 23, 1975

Mr. R. Stan Mortenson
Miller, Cassidy, Larroca and Lewin
2555 M Street, N. W.
Washington, D.C. 20037

Dear Mr. Mortenson:

In replying to your letter of June 11, 1975, I would first like to point out that, while President Truman donated the great bulk of his White House papers to the Government in 1957, he did retain during his lifetime in his private suite in the Library, the file that was

maintained in the White House by his personal secretary, Miss Rose Conway. These files, generally referred to as the President's Secretary's Files, were turned over to us and became the property of the Federal Government on November 26, 1974 in accordance with the terms of Mr. Truman's will.

Portions of the materials donated to the Library by President Truman in 1957 are restricted for the present in accordance with his instructions. Such restricted materials include: (a) papers classified as to secrecy and security pursuant to law and (b) papers which may in any manner injure, embarrass, or harass, any living person or the living members of the family of any deceased person, or papers which may in any manner be prejudicial to the conduct of foreign relations with any government and, papers containing statements made by or to President Truman in confidence in any official capacity.

1. There have been no requests from officials of subsequent administrations for access to the material donated to the United States in 1957 and restricted under the terms of the deed of gift. In the time since the President's Secretary's Files were turned over to the Library on November 26, 1974, in accordance with the terms of Mr. Truman's will, there have been requests for access to these files by departmental historians from the Departments of State and Defense. Both requests have been denied pending processing. There have been no requests for access to restricted material in either the 1957 or the 1974 donation by Members of Congress. It is our understanding that President Truman did permit officials from the Department of State's Historical Office to examine the President's Secretary's Files while they were still in his possession in connection with the preparation of the 1945 volume of that Department's *Foreign Relations* series. (see *Foreign Relations of the*

United States, Conference of Berlin (Potsdam), I, pp. XIII-XIV attached).

2. Material which is restricted under the terms of President Truman's 1957 deed of gift and his will is routinely denied to persons other than government employees. These denials are handled by the Library staff as agents of Mr. Truman. It is also our understanding that after he left office, President Truman received a number of requests from persons other than government employees to examine the President's Secretary's Files in connection with various research projects. (see letter dated February 11, 1966 from Philip C. Brooks, Director, Harry S. Truman Library, to Herbert Feis, copy attached).

3. In 1973, President Truman permitted his daughter, Mrs. Clifton Daniel, access to the Presidential papers retained by him after he left office in connection with the preparation of her biography *Harry S. Truman* (New York: Morrow, 1973). We have no knowledge of any other person being granted access to the President's Secretary's Files prior too Mr. Truman's death.

4. Under the terms of his will, President Truman bequeathed to the United States Government all of his papers as United States Senator, Vice President and President not already given to the Federal Government "other those therof (a) which shall contain a label showing a reservation of title in me, (b) which shall be determined by my Executors in their sole and absolute discretion to be related in whoie or in part to the business or personal affairs of myself or any of the members of my family (which shall, for the purpose of this will, include my wife, daughter, brother, sister, nephews and nieces)." Under the provisions enumerated under (a) and (b) above a small quantity of materials has been retained by the Truman family.

Sincerely,

/s/ Benedict K. Zobrist
BENEDICT K. ZOBRIST
Director

Enclosures

Foreign Relations
of the
United States
Diplomatic Papers

The Conference of Berlin
(The Potsdam Conference)
1945
(In Two Volumes)

Volume I

[SEAL]

United States
Government Printing Office
Washington: 1960
[EXCERPTS]

INTRODUCTION

[XIII] background material, did not present an adequate picture of the status of an individual question on the eve of the Conference, key documents of earlier date have been quoted or summarized in the footnotes in this volume.

In accordance with the regulation quoted above, because the Berlin Conference dealt importantly with military as well as political problems, the Department of State asked for and received the cooperation of the Department of Defense in locating and releasing for publication documents relating to the military aspects of the Conference. So far at this volume is concerend, this type of material consists of papers documenting the official position or advice of the War and Navy Departments on politico-military subjects later discussed at the international level at the Berlin Conference, as presented by the civilian leaders of those Departments and by the military chiefs in their capacity as members of the Joint Chiefs of Staff and Combined Chiefs of Staff. In addition, some papers originating with or transmitted by military authorities below these levels have been included in order to clarify references in other papers or to set forth information pertinent to the Conference given to the President or his principal advisers but inadequately reflected in Department of State papers.

SOURCES

The papers printed in this volume (except for a very few items reprinted from published sources) were drawn from the following files and collections of official and private papers:

A. INSIDE THE DEPARTMENT OF STATE

1. *Indexed Central Files*—Papers in the indexed Central Files of the Department State are indicated by a file number in the headnote, in the usual style of *Foreign Relations* volumes. The most important single item from the indexed Central Files used in preparing this volume was a "Briefing Book"—actually five notebooks of background information an recommendations—prepared

in the Department of State for the guidance of the Secretary of State and the President. This "Briefing Book" bears a single file number, and papers drawn from it are identified not only by that number but also by the editor's heading "Briefing Book Paper". A considerable number of documents (such as the translations of Japanese Foreign Ministry papers printed on pages 874-883) were not originally in the Central Files of the Department but have now been indexed and deposited in the Central Files.

2. *Staff Committee Files*—A collection of unindexed papers in the Records Service Center of the Department containing the minutes and documents of the Secretary's Staff Commitee, a body which included [XIV] the Secretary of State and the Assistant Secretaries, or their representatives.

3. *Coordinating Committee Files*—A collection of unindexed papers in the Records Service Center containing documents of the Coordinating Committee, a body which included the Under Secretary of State and officials of the Department at the level of office director.

4. *IPCOG Files*—A collection of unindexed papers in the Records Service Center containing the papers pertaining to the interdepartmental Informal Policy Committee on Germany.

5. *Pauley Files*—A collection of unindexed papers in the Records Service Center containing the office files of the United States Representative on the Allied Commission on Reparations, Edwin W. Pauley.

6. *Moscow Embassy Files*—The files for 1945, now in the Records Service Center, of the American Embassy at Moscow.

7. *London Embassy Files*—The files for 1945, now in the Records Service Center, of the American Embassy at London.

8. *Frankfurt USPdAd Files*—The files for 1945, now in the Records Service Center, of the Office of the United States Political Adviser at Frankfurt.

9. *LJT Files*—The office files of the Assistant Legal Adviser for Treaty Affairs.

10. *SJAE Files*—The office files of the Special Assistant to the Secretary of State for Disarmament and Atomic Energy.

B. OUTSIDE THE DEPARTMENT OF STATE

1. *Truman Papers*—The private papers of former President Harry S. Truman. Photocopies of some of these papers were obtained by the Department of State while Mr. Truman was still in office, and others were obtained from Mr. Truman's office in Kansas City, Missouri, in 1956.

2. *Leaky Papers*—A collection of official papers, now in the custody of the Joint Chiefs of Staff, from the office of the Chief of Staff to the Commander in Chief of the Army and Navy, the late Fleet Admiral William D. Leahy.

3. *J.C.S. Files*—The files of the Joint Chiefs of Staff. These files provided not only Joint Chiefs of Staff material but also Combined Chiefs of Staff documentation. The approval of the British Chiefs of Staff, along with that of the United States Joint Chiefs of Staff, was obtained for the declassification of Combined Chiefs of Staff documentation.

4. *Department of the Army Files*—These files provided, for this volume, several messages exchanged between United States Army officers in the field and the War Department.

5. *White House Files*—The list of the President's

party printed as document No. 115 came from the files of the White House.

February 11, 1966

Professor Herbert Feis
P.O. Box 417
St. John's, Antigua, W.I.

Dear Professor Feis:

We appreciate your interest in doing research in the Truman Library, even though I cannot be encouraging to you at this time. There is no change in the situation regarding the papers of former President Truman himself since you were here some years ago. When he left the Presidency he retained (as there is reason to think any President would) in his personal files a comparatively small amount of material that either he used in writing his *Memoirs* or was filed in his own immediate office when he was President. He has said a number of times that he is not going to make this material available to any one during his lifetime and he has been quite consistent about this.

There is in the Library itself a large quantity of valuable material, consisting primarily of the general files of the White House and the files of a number of White House staff members. In recent years, we have acquired papers of a number of other persons who were associated with Mr. Truman while he was President and we have been assured that we will receive several other bodies of papers.

We are enclosing a copy of our latest Newsletter, an informal occasional issuance of the Truman Library Institute, which contains a list of the historical groups in the Library.

If we can be of assistance in your research, we shall be happy to do so.

Very sincerely,

Enclosure

Philip C. Brooks
Director

GENERAL SERVICES ADMINISTRATION
National Archives and Record Service
Dwight D. Eisenhower Library
Abilene, Kansas 67410

EXHIBIT D

[SEAL]

July 18, 1975

Mr. R. Stan Mortenson
Miller, Cassidy, Larroca & Lewin
2555 M Street, NW
Washington, DC 20036

Dear Mr. Mortenson:

This letter is in response to your letter concerning litigation between President Richard Nixon and disposition of his presidential materials. The Eisenhower Library was asked to respond to specific questions and provide certain information concerning practices of the Eisenhower Library with Mr. Eisenhower's papers.

The responses to those questions are as follows:

1) Official agency historians have requested and been granted access to restricted presidential materials for work on officially approved projects. There have been no other requests for access to restricted presidential materials of the Eisenhower Administration by officials

of subsequent administrations or members of Congress. Occasionally there have been approaches made by telephone, but once they learned that the material was restricted there was no follow-up in seeking access. In nearly every case the request was made by phone on a preliminary basis that did not require any documentation as to action.

2) There have been requests by researchers other than government employees or officials for access to the Eisennower Presidential Papers which are donor restricted. It is Library procedure to direct such requests to John S. D. Eisenhower, who under the Deed of Gift transferring the papers of President Eisenhower to the United States, is the designated person who authorizes access to donor restricted materials and controls literary property rights. Unless such material can be opened on an equal access basis these requests are denied by John S. D. Eisenhower in his capacity as Chairman of the Eisenhower Manuscript Committee. Because these requests are referred directly to Mr. Eisenhower, the Library does not hold copies of correspondence between the researcher and Mr. Eisenhower beyond the initial inquiry.

3) Since the conclusion of General Eisenhower's term in office, John S. D. Eisenhower has had access to restricted material of the Eisenhower Administration which is not generally available to the other members of the general public. This access has been in connection with his role as Chairman of the Eisenhower Manuscript Committee. General Eisenhower himself used the materials known as the Personal Papers of the President (Whitman File) to write his memoirs of his terms in office. John S. D. Eisenhower has subsequently used, though infrequently, some materials in his publications, namely *Strictly Personal.* John S. D. Eisenhower is the only such person to have this access. This right, according to Section 11 of

the Deed of Gift, was reserved for both General Eisenhower and his heirs to "make use of any of these papers in writing for publication."

4) Mr. Eisenhower did retain a collection of papers known as the Gettysburg File (Whitman File) in his residence at Gettysburg, Pennsylvania. The Dwight D. Eisenhower Library received the White House Central Files, the files of the White House administrative offices, and most of the White House staff files. The remaining files from the White House with the exception of the DDE office files (Ann Whitman Files) were sent to Fort Ritchie. This file was subsequently sent to Gettysburg in March 1961, for use by the President in writing his memoirs. In April 1967, the sensitive staff files stored at Fort Ritchie since 1961, were sent to NLE, along with some AEC materials and other restricted data information. At the time of the death of President Eisenhower in 1969, the Whitman File was sent to Abilene, that being the only remaining file of presidential materials outstanding. That file was maintained in Gettysburg for the President's convenience under terms of the Letter of Gift executed in April of 1960. To the best of our knowledge, President Eisenhower did not dispose of any of the presidential materials, official or personal, that were in his possession.

Sincerely yours,

/s/John E. Wickman
JOHN E. WICKMAN, Director
Dwight D. Eisenhower Library

EXHIBIT E

[SEAL]

July 23, 1975

Mr. R. Stan Mortenson
Miller, Cassidy, Larroca & Lewin
2555 M Street, NW
Washington, DC 20037

Re: Richard Nixon v. Administrator of General Services, et al. (USDC D DC), Civil Action No. 74-1852.

Dear Mr. Mortenson:

The following information is provided in response to the questions you raised in your letter of June 11, 1975.

Question No. 1: I assume that by "restricted presidential materials" you are referring to documents which have been closed by the Library staff working with the Donors' Committee under the terms of the instrument by which President Kennedy's papers were deposited in the Library. To the best of my knowledge, we have had no specific requests from government officials for access to non-classified restricted presidential materials which were not available to the public.

We have had on the other hand, inquiries from time to time from officials of subsequent administrations and members of Congress about the availability of various materials in the Library. This has included requests for access to security classified documents from persons within the government (or on contract with a government agency) on approximately 4 occasions that we have been able to locate to date.

Question No. 2: To my knowledge, there have been no situations where a request for access to closed materials

was made to officials of the National Archives and Records Service and then denied by the Donors' Committee. You will have to check with individuals who have served on the Donors' Committee for President Kennedy's papers and with members of the Kennedy family, to determine whether or not any requests have been made directly to them.

Question No. 3: The following persons have served on the Committee appointed by the donors of the papers of President Kennedy: Burke Marshall (Chairman), Herman Kahn (who died in June, 1975); Byron White (who resigned in April, 1971); Theodore Sorensen (who was appointed in May, 1971). Mr. Kahn's replacement has not yet been appointed.

Question No. 4: Enclosed are four documents relating to the disposition of President Kennedy's papers.

Question No. 5: There have been a total of three meetings of all members of the Donors' Committee. Those attending these meetings were:

(a) July 18-19, 1969—Marshall, Kahn and White and John Stewart and Francis Harrington (Library staff)

(b) April 14, 1970—Marshall, Kahn, and White and Stewart and Harrington

(c) July 12, 1972—Marshall, Kahn and Sorensen and Dan Fenn, Stewart and Harrington

At various times, one or two members have come to the Library to review materials and offer their recommendations. At both the formal meetings and the visits of individual members, a sample of documents we were recommending be opened was reviewed, as well as a sampling of those documents we were recommending to be closed. On occasion, we have consulted with members of the Donors' Committee by telephone or informal

letter. In a few cases, we have physically sent copies of the materials to members of the Donors' Committee, soliciting their opinions on openings or closings. In most instances, the review has taken place at the Kennedy Library. The Committee has delegated to the Library staff the authority to remove restrictions and to open materials formally closed in the course of the initial review and materials which had been classified and then declassified.

Question No. 6: Since September, 1969, when the Kennedy Library began its operations as a presidential library, no individual has been given access to materials which were not generally available to everyone, except for the government researchers referred to in answer to question 1 above who had access to classified documents. Prior to that date, we know of no special access except for one document in our files which states that Mr. Theodore White obtained permission from Robert Kennedy in December, 1965, to examine certain papers of President Kennedy. The document does not state the purpose of the research.

Question No. 7: Certain objects (mainly in the form of memorabilia) and papers relating to the private affairs of President Kennedy were excluded from the materials deposited with the United States Government by the instrument dated February 25, 1965. Although the National Archives and Records Service did not have complete custody of all of the materials from November 22, 1963 until the actual effective date of the deposit, February 25, 1965, we have no reason to believe that we did not receive all the presidential materials of the Kennedy Administration. During this period of time, some of these materials were in the custody of Mrs. Evelyn Lincoln, President Kennedy's former secretary, and some remained at the White House.

Yours very truly,

/s/Dan H. Fenn, Jr.
DAN H. FENN, JR.
Director, Kennedy Library

EXHIBIT F

[SEAL]

THE LYNDON BAINES JOHNSON LIBRARY

Austin, Texas
July 14, 1975

Mr. R. Stan Mortenson
Miller, Cassidy, Larroca and Lewin
2555 M Street, Northwest
Suite 500
Washington, D. C. 20037

Dear Mr. Mortenson:

With response to your letter of June 11, the numbered paragraphs in this letter will correspond to the similar paragraphs in yours.

1. Requests for access to restricted materials in this Library have been received from the following Members of Congress:

– Senator William J. Fulbright, Chairman of the Senate Committee on Foreign Relations, June 14, 1972

– Senator Adlai Stevenson III, July 19 and 28, 1972

Copies of the exchanges of correspondence pertaining to these requests are attached.

2. After President Johnson's death, a Library employee who had worked for Mr. Johnson for many years presented me with eight sealed Records Center cartons (each one cubic foot in size) which she said contained selected telephone conversations between President Johnson and other persons, some of which had been recorded manually by a secretary, and some by dictaphone belts, and a limited number of meetings recorded in the Cabinet Room in 1968, mostly concerned with national security matters. Along with these was a signed statement that Mr. Johnson had committed the materials in the cartons to her personal care with instructions that if they were still in her personal care at the time of his death, she should turn them over to the Director of the Library with instructions that they be kept sealed for fifty years. Because they came to my care sealed, and have remained sealed, I have no knowledge of the general nature of the conversations contained on the recordings. Attached is a copy of the statement I have made publicly relating to this material.

3. During the period of his retirement, former President Johnson had access to materials on deposit in the Library, which he used in the preparation of his memoirs. Other persons with similar access were those who assisted Mr. Johnson in his writing—and for that specific purpose. Those persons included: W. Thomas Johnson, Robert Hardesty, William Jorden, Walt W. Rostow, Doris Kearns, and myself. Professional archivists on the staff of the Library also had access, of course, which they used to process the materials and perform reference service for the former President and his assistants.

4. Of the 31 million pages on deposit in the Library, 21 million are considered to be President Johnson's personal papers. (The remainder are copies of Federal records, and papers donated to the Library by other persons.) A relatively small percentage of papers were given to the U.S. government by President Johnson during his lifetime; title to the remainder passed to the government under the terms of Mr. Johnson's last will and testament.

All the papers mentioned in the paragraph above were transferred to Austin, Texas, at the end of the Johnson Administration. Until the construction of the Library was completed, in May 1971, the papers were stored, and the Library staff was housed, in the Federal Building in Austin. Since then, the materials have been in the Library. From the end of the Johnson Administration, the Director of the Library has been consistently the custodian of all papers, except for two bodies of material. Those mentioned in paragraph 2 of this letter comprise one of the exceptions. The other was a sealed envelope which was turned over to me after President Johnson's death by a former White House aide who came to Texas to serve as consultant to former President Johnson. Along with the envelope was a statement signed by the aide that the envelope incuded materials which in President Johnson's judgment were of a sensitive nature and which should be handled as a matter of national security; these materials, the statement said, had been committed by Mr. Johnson to the aide's personal care with instructions that if they were still in his care at the time of Mr. Johnson's death, they should be consigned to the Library under conditions the aide judged to be appropriate; accordingly, the statement presented the recommendation that the papers be kept sealed for fifty years.

I hope you will find this a satisfactory response to the questions raised in your letter.

Sincerely,

/s/Harry J. Middleton
Harry J. Middleton
Director

Enclosure

cc: Peter M. Kreindler, Esquire
Irwin Goldbloom, Esquire
William A. Dobrovir, Esquire

August 3, 1972

Dear Senator Stevenson:

In response to your letters of July 19 and July 28, I am afraid I must give you a disappointing reply.

We have received, and I'm sure will continue to receive, a number of requests similar to yours. I think a certain amount of background information on the procedure for organizing and processing the papers on deposit in this Library will be helpful to you in understanding why it is not possible for us to make an affirmative response to these requests.

The task of organizing, reviewing and making available for research the 31 million papers in the Library's collections is an enormous undertaking. The size of the task required, early in the Library's operation, that we establish a set of priorities for staff work and determine a schedule for opening the documents.

This was similar to the needs that other Presidential Libraries before us had recognized, and our conclusions were consistent with the ones arrived at by those institutions: We decided to concentrate first on processing and organizing the papers which could be opened most quickly—the papers concerned with domestic policy. This process has begun—we opened our first group of papers, those on Education, earlier this year—and it will continue over the next several years.

As soon as it is practical and feasible, we will move into the area of organizing and readying for review the materials relating to foreign relations. Those materials, however, present problems of substantial complications, because of the classification of many of the documents by different agencies and departments of government; because of their sensitivity; and because of their bearing on present U. S. relations with other countries.

In view of these circumstances, and following the procedures established in other Presidential Libraries, even after the task of organizing the foreign policy papers is completed, the Library itself cannot be the sole determiner of when those papers will be made available. That determination must be made in close consultation with those agencies of government having primary responsibility for the conduct of the Nation's defense and foreign affairs, and with consideration for the status of our continuing relationships with other countries.

At that time, the papers that are opened for review will be made available to all qualified researchers. Regulations established by The National Archives, following the dictates of the Freedom of Information Act, forbid our making certain papers available to individuals on a selective basis.

I hope that the foregoing reasons will give you a clearer understanding of why we are unable to respond in the

affirmative to your request. This answer comes to you with my personal regrets, and my best wishes.

Sincerely yours,

Harry Middleton
Director

Honorable Adlai E. Stevenson III
United States Senate
Washington, D. C. 20510

HM:jh

United States Senate
Washington, D.C. 20510

July 19, 1972

Mr. Harry Middleton
Director, Lyndon B. Johnson Library
University of Texas
Austin, Texas

Dear Mr. Middleton:

In the latter part of 1964 and early 1965 my father and Secretary General U Thant were involved in a Vietnam peace initiative. The history of this affair is murky for my father was the only person with complete knowledge of the initiative from both ends—Thant and Washington. Unfortunately, he wrote only a few memos about the affair and these undoubtedly were classified by the government immediately after his death.

Harlan Cleveland states that my father wrote a memo about the peace initiative to the White House on February 17, 1965.

There is also a State Department memo, probably written about the same time, from Secretary Rusk to McGeorge Bundy outlining, somewhat critically I understand, the State Department's view of this affair.

This initiative is not discussed in the "Pentagon Papers." Efforts to locate these memos and otherwise clear up the historical record have not been successful. I would be most grateful for any help you could give me.

Do you know where I would be able to obtain copies of the Rusk memo and the memo my father sent to the White House? Are you familiar with any other memos or documents written during this time about this intiative? Are there any personal recollections you could share with me about this matter?

Many thanks for any help you can give me.

Sincerely,

/s/[ILLEGIBLE]

United States Senate
Washington, D.C. 20510

July 28, 1972

Mr. Harry Middleton
Director
Lyndon B. Johnson Library
University of Texas
Austin, Texas

Dear Mr. Middleton:

I have been told that the memos by my father and Secretary Rusk which are referred to in my letter of July 19 were received by McGeorge Bundy and have been transferred to your possession at the Library. I have no idea what the ground rules are. If they are classified, perhaps something could be done at this end to release them. Be that as it may, I would be most grateful if you could help. My father's biography is now being edited. His edited writings are also being published. And the absence of his memo leaves a large gap in the historical record. It has been confirmed that the memo never reached President Johnson, so I don't see how his interests are affected. My concerns are twofold, to preserve the history and my father's place in it.

Ever so many thanks for any help you can give me.

Sincerely,

/s/[Illegible]

July 5, 1972

Dear Mr. Chairman:

I am writing in response to your letter of June 14. Your request in this regard is understandable, as are a large number of similar requests which we have received. However, I must give you the same reply I have given to the others, which is that we cannot accede to the request at this time.

The task of organizing, reviewing and making available for research the 31 million papers in the Library's collections is an enormous undertaking. The size of the

task required, early in the Library's operation, that we establish a set of priorities for staff work and determine a schedule for opening the documents.

This was similar to the needs that other Presidential Libraries before us had recognized, and our conclusions were consistent with the ones arrived at by those institutions: We decided to concentrate first on processing and organizing the papers which could be opened most quickly—the papers concerned with domestic policy. This process has begun—we opened our first group of papers, those on Education, earlier this year—and it will continue over the next several years.

As soon as it is practical and feasible, we will move into the area of organizing and readying for review the materials relating to foreign relations. Those materials, however, present problems of substantial complications, because of the classification of many of the documents by different agencies and departments of government; because of their sensitivity; and because of their bearing on present U.S. relations with other countries.

In view of these circumstances, and following the procedures established in other Presidential Libraries, President Johnson, the Archivist of the United States, and I are agreed that even after the task of organizing the foreign policy papers is completed, the Library cannot be the sole determiner of when those papers will be made available. That determination must be made in close consultation with those agencies of government having primary responsibility for the conduct of the Nation's defense and foreign affairs, and with consideration for the status of our continuing relationships with other countries.

For the foregoing reasons, I am sure you will understand why we are unable to respond in the affirmative to your

request. I look forward to the day when ultimately all of the papers in the Library can be made available.

Sincerely yours,

Harry Middleton
Director

Honorable J. W. Fulbright
Chairman
Committee on Foreign Relations
United States Senate
Washington, D. C. 20510

HM:njh

United States Senate
Committee on Foreign Relations
Washington, D.C. 20510

June 14, 1972

Mr. Harry Middleton
Director, Lyndon Baines
Johnson Library
Austin, Texas 78712

Dear Mr. Middleton:

As you may know, staff members of the Committee on Foreign Relations are examining American involvement in Indochina. In their studies they are using the documents and analyses of the "Pentagon Papers" as well as other relevant sources.

The Pentagon Papers have proved to be a valuable source of information but unfortunately they contain

few documents relating to Vietnam policy in the Johnson Administration. I would appreciate the Library furnishing Committee researchers with documents in the possession of the LBJ Library which relate to this period and which might be useful to their studies. In particular, the Committee researchers would like to have access to the papers analyzing the major military and foreign policy decisions of the Johnson Administration converning Vietnam and supporting documentation compiled in the Administration's last months.

It has been called to my attention that among other studies, the State Department and White House staff prepared thoroughly documented studies on the 1964 Tonkin Gulf crisis and the Administration's decision to send large forces to Vietnam. The Committee would appreciate receiving these also.

Since some of these documents and analyses are still sensitive, our staff people, who are cleared for Top Secret work through the Department of Defense, will naturally accord them the respect due sensitive documents.

Sincerely yours,

/s/J. W. Fulbright
J. W. Fulbright
Chairman

STATEMENT MADE BY HARRY J. MIDDLETON

There is a section of materials in the Lyndon Baines Johnson Library which reflect:

A. selected telephone conversations between the President and other persons; some of these were recorded manually by a secretary, some by dictaphone belts.

B. a limited number of meetings recorded in 1968 in the Cabinet Room; most of these concerned national security matters.

EXHIBIT G

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20530

[SEAL]

August 12, 1975

Address Reply to the
Division Indicated
and Refer to Initials and Number
DJA:mae
145-171-137

R. Stan Mortenson, Esquire
Miller, Cassidy, Larroca & Lewin
2555 M Street, N.W.
Suite 500
Washington, D. C. 20037

Re: Richard Nixon v. Administrator of General Services, et al. (USDC D. D.C.) Civil Action No. 74-1852.

Dear Mr. Mortenson:

As you requested, I have obtained some additional information from the Directors of the presidential libraries whose affidavits we submitted in this action. I understand that this information is intended to clarify certain aspects of those affidavits and will obviate the need for any cross-examination by deposition. I further understand that you will prepare a stipulation by which the parties will agree that the affiants would have

testified to the following as on cross-examination, had they been called in this case, and that their affidavits will represent their direct testimony.

I. Questions Submitted For HARRY J. MIDDLETON

1. What was the nature and extent of Mr. Middleton's relationship with President Johnson prior to President Johnson's death.

ANSWER: From early 1967 until the end of the Johnson Administration, Mr. Middleton served on President Johnson's staff in the White House (his title was Staff Assistant to the President). In January 1968, Mr. Middleton went to Texas with Mr. Johnson at his request, and served on the staff of the former President until he was appointed Director of the Library on May 18, 1970.

2. What role, if any, did President Johnson have in selecting any of the staff (including Chester Newland and other administrative personnel).

ANSWER: Mr. Middleton can speak with authority on President Johnson's role only from the beginning of his directorship of the Library. He is aware, of course, that Mr. Johnson recommended him to be the Director to succeed Dr. C. Newland. At the beginning of the next fiscal year, after Mr. Middleton became Director on July 1, 1970, five members of the staff of the former President Mary Rather, Mildred Steagall, Ruby L. Nivens, Elizabeth Tilson, and Willie Day Taylor, were transferred to the staff of the Library. These transfers were made with the knowledge and approval of Mr. Johnson. He played no other role thereafter in the selection of staff. (Of these five persons, all but Elizabeth Tilson have since retired from the Library staff; Mrs. Tilson remains on the staff).

3. Were Dr. Dougall and Dr. Costrell (the State Department employees referred to in ¶ 7 of Middleton's affidavit) denied access to the materials they wanted to see because the Library believed that some of the material might be properly classifiable as donor-restricted but had not to that time been processed by the archivists.

ANSWER: The reason given to Doctors Dougall and Costrell was that the material had not been reviewed for donor restrictions.

4. What were the stated purposes of Doctors Dougall and Costrell's request for access.

ANSWER: A State Department historical project concerning American policy toward China.

5. Were Doctors Dougall and Costrell subsequently provided access to *all* of the materials they had previously requested.

ANSWER: No.

6. Was the Church Committee staff member referred to in ¶ 7 of Middleton's affidavit given access to any donor-restricted material. If so, what purposes were outlined in obtaining the consent of library personnel or any other person to permit such access.

ANSWER: No.

7. Have there been any requests for access to the Johnson tape recordings which were held by the Library under a 50-year seal.

ANSWER: No.

8. What is the Library's position concerning requests for access to these recordings by a) Members of Congress or their staffs, or b) members of the incumbent Administration. Would such requests be referred to members of the Johnson family or any person not associated with the General Services Administration.

ANSWER: To *any* requests for access to the materials mentioned in question 7, the Library's position would be that we consider President Johnson's wishes, as transmitted after his death, to be binding, and we would honor them insofar as possible. I know of no reason why such requests would have to be discussed with members of the Johnson family, or any persons not associated with GSA.

9. The same questions as set forth in ¶ 8 above with respect to the sealed envelope received by Mr. Middleton after President Johnson's death and referred to in his letter to me of July 14, 1975.

ANSWER: In essence, the answer given above applies also to the materials mentioned in question 9.

II. Questions Submitted For JOHN STEWART

1. Of the 85% of the total volume Kennedy presidential papers processed to date, approximately what percentage is presently under donor-restriction?

ANSWER: A total of 4,400 boxes of President Kennedy's papers have been completely processed (screened). Approximately 30 boxes of material were closed, under donor restrictions (.6%).

2. Do members of the Church Committee referred to in Paragraph 6 of the Stewart Affidavit, or any other persons listed in that paragraph, have access to donor-restricted material? If so, explain the statement by Mr. Dan Fenn, Director of the Kennedy Library, in his letter to me of July 23, 1975 in which he states that he has no knowledge of requests by Government officials for access to non-classified, restricted presidential materials which are not available to the public.

ANSWER: The Church Committee has not had any

access to donor restricted material; none of the files of interest to the Committee contained material of this nature.

3. If the Church Committee staff or any other person has access to donor-restricted material, state what material and describe the procedures that were followed in their obtaining that access.

ANSWER: Aside from archival personnel, members of the Donors Committee, and the individual mentioned in paragraph 7 below, neither the Church Committee staff nor any other person has had access to donor-restricted material.

4. Are there any portions of the Kennedy presidential materials which members of the library staff have not been permitted to review because of conditions placed upon the donation of the materials?

ANSWER: All of the material donated to the Government by the instrument of gift of February 1965, has been available for review by the library staff. Certain material not covered by that instrument has not been available. (See Answer to question 5 below).

5. Are there any portions of the Kennedy presidential materials which were pre-screened by members of the Kennedy family or the donor committee prior to review by the library staff?

ANSWER: Yes, pursuant to the deed of gift.

6. Have there been any requests for access to donor-restricted material? If so, how was that access processed?

ANSWER: The library has had routine inquiries from numerous researchers about individual documents closed in accordance with the terms of the instrument of gift ("donor-restricted"). As a part of our service to

researchers we re-revised closed documents, on request, to determine whether the reason for the initial closing no longer exists so that they can be opened. This has actually happened on only one or two occasions. We have had no formal (i.e., written) requests for access to documents which have been closed.

7. Did Robert Kennedy's permission to Theodore White to utilize the Kennedy presidential materials (which is referred to in Dan Fenn's letter of July 23, 1975) include authorized access to donor-restricted material or other material not available to the general public for reasons other than security classifications?

ANSWER: At the time Theodore White used the Kennedy papers, no restriction had been placed on individual documents. The entire collection was closed because it had not yet been reviewed to identify items which could not be opened.

8. Please provide the four documents concerning disposition of the Kennedy presidential papers referred to in Paragraph 2 of Dan Fenn's letter.

ANSWER: Copies of these documents are attached to this letter.

9. Are there any tape recordings in the possession of the Kennedy Library which include conversations of President Kennedy and others? If so, state the Kennedy Library's extent of knowledge concerning these recordings. Were any such recordings or portions thereof, if they exist, under donor restriction as to access at anytime?

ANSWER: There are 68 dictabelts of telephone conversation and 125 magnetic tapes of meetings between President Kennedy and others which are or have been physically stored in the Kennedy Library but have not yet been turned over to the library. Consequently,

the library staff has only very limited knowledge of their nature and extent. Among the material which has been donated to the library as a part of President Kennedy's papers is one tape of two telephone conversations between President Kennedy and Prime Minister Macmillan (October 1962). This tape (and transcript) is classified as top secret.

III. Questions Submitted For JOHN C. WICKMAN

1. Have the official agency historians referred to in Mr. Wickman's letter to me dated July 18, 1975 had access to donor-restricted material. If so, what was the procedure followed for obtaining permission for that access.

ANSWER: The official agency historians referred to in Mr. Wickman's letter to you on July 18, 1975, did not have access to donor-restricted material. However, since that time historians from the Department of State have received permission from John S. D. Eisenhower to examine donor-restricted material and have done so.

IV. WILLIAM R. EMERSON

Dr. William R. Emerson has knowledge of only one instance of access by officials of subsequent Administrations to donor-restricted material. That instance involved a confidential report to Franklin D. Roosevelt in 1933 which was requested in 1953 by Charles F. Willis, Chief Assistant to President Eisenhower.

Dr. Emerson affirms that the letter from Herman Kahn to Lt. Colonel E. M. Harris dated June 15, 1950 which was attached to his letter to you on July 23, 1975, is a true and accurate copy of that letter as maintained in the Roosevelt Library files.

Yours very truly,

/s/David J. Anderson
David J. Anderson
Special Litigation Counsel
Civil Division

cc: Robert E. Herzstein, Esquire
Arnold and Porter
1229-19th Street, N.W.
Washington, D. C. 20036

cc: William Dobrovir, Esquire
2005 L Street, N.W.
Washington, D. C. 20036

cc: Leon Friedman, Esquire
Hofstra University
School of Law
Southern California Avenue
Hempstead, New York 11550

[Caption Omitted in Printing]

MOTION FOR LEAVE TO WITHDRAW

The Special Prosecutor hereby moves for leave to withdraw from this litigation on the ground that litigation over his interest in the materials that are the subject of the instant case has become moot.

1. The interest of the Special Prosecutor in the Presidential materials of the Nixon Administration has been a well-defined one—to obtain use of the tapes and documents relevant and important to ongoing criminal investigations and prosecutions within the jurisdiction of the Special Prosecutor. The Special Prosecutor's need for

these materials was recognized by President Ford, who authorized his Counsel to enter into an agreement providing the Special Prosecutor access to and use of the materials under carefully delineated procedures. The provisions of this agreement—referred to in these proceedings as the November 9th Agreement—are embodied in the regulations issued by the Administrator under Section 102(d) of the Presidential Recordings and Materials Preservation Act ("the Act") which, in general terms, authorizes access to these materials by executive branch agencies or departments for lawful government use. See 41 C.F.R. §105-63.302-1, 40 Fed. Reg. 2671 (January 14, 1975).

2. Former President Nixon, in the instant litigation, seeks injunctive relief not only against the Act, but also against implementation of the November 9th Agreement. To protect his ability to obtain necessary tapes and documents from the Nixon Administration materials, under both the statute and the November 9th Agreement, the Special Prosecutor sought to intervene in these proceedings. In doing so, he was prepared to argue, as he did earlier in *Nixon v. Sampson*, D.D.C. Civ. No. 74-1518, that whether or not Mr. Nixon has rights in these materials sufficient to prevent access to them by private citizens, he has no right to prevent their lawful use by government agencies, especially in the face of a finding by the incumbent President that their use was necessary to the public interest. The Special Prosecutor, in seeking intervention, also was prepared to argue that the statute itself is a constitutional exercise of power by Congress. This Court granted the Special Prosecutor's motion to intervene by Order dated May 1, 1975.

3. From the outset, however, the Special Prosecutor has stressed in the various proceedings relating to these materials that his need was for *prompt* use of them.

Because immediate implementation of the November 9th Agreement was barred by an existing court order in *Nixon v. Sampson, supra,* the Special Prosecutor entered into discussions with counsel for Mr. Nixon in order to find ways consistent with that order to satisfy the needs of this Office. As a result of those discussions, the Special Prosecutor and counsel for Mr. Nixon agreed upon procedures whereby, with the consent of the incumbent Administration, the Special Prosecutor would receive the tapes and documents he had reason to believe were relevant and important to investigations and trials still being conducted by his Office.

4. These procedures have been implemented to the satisfaction of the Special Prosecutor. All files that were likely to contain documents pertinent to the Special Prosecutor's ongoing, designated investigations have been examined, and all documents from the designated files have been produced to the Special Prosecutor when pertinent to the designated inquiries. In addition, the Special Prosecutor has received or listened to all designated Presidential tape recordings that were arguably relevant to specified investigations.

5. Counsel for Mr. Nixon has assured the Special Prosecutor that the established procedures will be followed in the future as the need for additional materials arises in any future trials or investigations. In addition, subpoena power will remain available if needed.

6. The positions that the Special Prosecutor was prepared to support in this litigation will be represented by the United States, a party herein.

Under these circumstances, there is no live dispute between plaintiff and the Special Prosecutor, and the reasons which led the Special Prosecutor to intervene in this action no longer apply. Accordingly, the Special Prosecutor submits that he should be granted leave to withdraw.

Respectfully submitted,

/s/Henry S. Ruth, Jr.
Special Prosecutor

/s/Peter M. Kreindler
PETER M. KREINDLER
Counsel to the Special Prosecutor

/s/Kenneth S. Geller
KENNETH S. GELLER
Assistant Special Prosecutor

Watergate Special Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005.

September 8, 1975.

[Caption Omitted in Printing]

ORDER

Upon consideration of the Motion of the Special Prosecutor for Leave to Withdraw, dated September 8, 1975, it is by the Court on this day of September, 1975, hereby

ORDERED that the aforesaid motion be, and the same hereby, is granted.

CARL McGOWAN
United States Circuit Judge

EDWARD A. TAMM
United States Circuit Judge

AUBREY E. ROBINSON, JR.
United States District Judge

[Caption Omitted in Printing]

JOINT MEMORANDUM OF INTERVENOR-DEFENDANTS IN OPPOSITION TO PLAINTIFF'S REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF

* * *

APPENDIX I

DOCUMENT PRACTICES OF OTHER FORMER PRESIDENTS

In this appendix, we examine the document practices of eight Presidents of the United States: Washington, Jefferson, John Quincy Adams, Buchanan, Taft, Harding, Franklin Roosevelt, and Truman. We do not contend that all Presidents followed a consistent pattern; indeed, the eight Presidents discussed below treated their papers in differing manners. We do submit, however, that this analysis makes it clear that there is no "unbroken tradition" which would justify plaintiff's extravagant claims.

a. *George Washington.* Washington took a number of papers with him when he left office. However, almost to the document, the materials Washington retained would be regarded as personal, as distinguished from official, in nature. Thus, Washington took with him letters to friends, commendations, and the like. He left behind, lodged with the appropriate department of the executive, his official papers. In fact, even before he became

President, Washington clearly articulated his view that official papers were not to be regarded as private or personal property. During the Revolution while Commander-in-Chief, Washington wrote that:

> "It appears to me impracticable for the best Historiographer living, to write a full and correct history of the present revolution who has not free access to the Archives of Congress, those of Individual States, the Papers of the Commander-in-Chief, the Commanding Officers of separate departments. Mine, while the War continues, *I consider as a species of Public property, sacred in my hands;* and of little Service to any Historian who has not that general information which is only to be derived with exactitude from the sources I have mentioned. *When Congress then shall open their registers, and say it is proper for the Servants of the public to do so, it will give me much pleasure to afford all the Aid to your labors and laudable undertaking which my Papers can give. . . .*" 25 *The Writings of George Washington* 288 (1938) (emphasis added).

B. *Thomas Jefferson.* Jefferson made no similar statement as to his policy with respect to retention of papers generated while he was in office. However, according to Professor Julian P. Boyd of Princeton University who has worked for many years with the Jefferson papers, and who is also on the Board of Directors of the Truman Library,* Jefferson was throughout his life concerned with the proper retention of documentary material he produced. Thus, President Jefferson's policy was that originals of all official papers recieved, or generated, by him were to be turned over to the relevant government department for preservation. Such official material included letters relating to the

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**Who's Who in America* 339 (1974). Professor Boyd is also President of the American Philosophical Society. *Id.*

performance of his official duties, applications for employment with the government, and the like. Upon leaving office, Jefferson took with him only his private papers, including personal letters and commendations, which amounted to a small percentage of the documents he believed to be public in nature. Jefferson followed this policy not only as President, but previously as Secretary of State and did not distinguish between the documents he believed should remain as official ones in the course of his presidential duties and those he thought should be treated as official documents in the course of his duties as Secretary of State. *Boyd Aff.* at 2. Jefferson was, however, particularly scrupulous in separating his public from his personal documents:

> "During his two terms as President, Jefferson was extremely meticulous in depositing in the various departmental offices—State, Treasury, War, Justice, and Post Office—every document having any relation to the conduct of public business or being in any sense official in nature. *As a result, the vast bulk of records of an official nature generated during Jefferson's presidency are still to be found in the various departmental record groups in the National Archives.* Many of these could be regarded as personal papers and, under some other presidents, probably would have been. Being profoundly convinced that, as he put it late in life, 'it is the duty of every good citizen to use all the opportunities which occur to him for preserving documents relating to the history of our country,' *Jefferson unquestionably employed every opportunity offered by the presidency to see to it that the public records of the office remain in public custody.*
>
> "While no exact statistical tabulation can be made of the relative amounts of personal papers that Jefferson took with him on leaving office and those of a public nature that he left in the departmental offices, my estimate of the ratio of the size of the two categories would be about in the order of one to fifty. This is a conservative estimate. It should be noted that, for his own convenience and protection, Jefferson retained *copies* of a good many official records, especially his notes and rough drafts of messages to Congress, proclamations, communications with departmental heads, and so on. But in all cases, so far as I know, the *originals* of these official documents are to be found among our public records as left there by him." *Boyd Aff.* at 2-3 (emphasis added).

Indeed, when Congress appropriated $20,000 in 1948 for the purchase of the private papers Jefferson had taken with him,

> "fully half of the collection . . . was returned . . . as being too personal a nature for government acquisition." H. Relyea, *The Management of Presidential Papers: A Brief Overview,* App. I, p. 2 (Library of Congress, September 27, 1974) (hereinafter cited as "*Presidential Papers*").

c. *John Quincy Adams.* John Quincy Adams is often cited as a President who asserted a personal right to the disposition of presidential documents because he took a substantial amount of material with him when he left the White House. However, Adams was a prolific writer—he wrote some 6,300 letters and 15,000 diary pages—and most of the material taken consisted of these letters and diary pages. *Presidential Papers,* App. I, p. 3. *It thus appears that Adams actually followed Washington and Jefferson's example by leaving behind his official papers.* In fact, prior to becoming President, Adams had adopted the position that governmental officials' right to custody of private or public papers must be responsive to the governmental need for access. During the War of 1812 when Adams headed the American delegation seeking to

negotiate a peace treaty with Great Britain, he maintained that whoever had custody of the documents involved would be "subject to the orders of our Government" and should "take charge of them accordingly." 3 *Memoirs of John Quincy Adams* 130 (1874). Adams was also of the opinion that the constitutional prerogative of refusing to make public governmental papers "pertains to the office and not to the man." H. G. Jones, *The Records of a Nation* 162 (1969).

d. *James Buchanan.* Buchanan also distinguished between his personal papers, which he took with him when he departed the office and his official papers, which he left behind. According to Professor Elbert B. Smith, Buchanan's biographer, the great majority of the documents generated by the Executive Office during Buchanan's term were left behind, lodged with the appropriate agencies of government. Int. Def. Ev. Sub., Smith Letter.

e. *William Howard Taft.* President Taft is often cited as a "classic" example of a President who took the Executive Office papers with him when he left office. President Taft's actions, however, do not coincide with that view. Rather, Taft was particularly concerned with "the proper management and preservation of the [presidential papers as the] evidentiary sources of the Nation's life." 1 *Index to the William Howard Taft Papers* vi (1972) (hereinafter cited as "1 *Index*"). Indeed, Taft had since 1912 supported the idea of a national archives to house records of the Federal Government, including those of the President, but no such storehouse was available during his term. 1 *Index* v-vi. *Taft himself made it clear that the primary reason he took his papers with him was that at the time the federal Government had provided no place to store them.* Shortly after he left office, he wrote to the White House Executive Clerk stating:

> "I do not think that I ought to burden the White House with these things and, therefore, want them sent to me." 1 *Index* v.

Moreover, Taft destroyed none of his documents, and Taft's family returned the documents to the Library of Congress beginning in 1919. 1 *Index* vi-vii.

f. *Warren Harding.* The unfortunate events surrounding the destruction of the majority of the papers of the Harding Presidency demonstrate the danger of a policy of exclusive ownership, particularly where an administration has been tainted by scandals which provide an incentive for the destruction of materials personally embarrassing to the former President or other individuals involved, yet which would be of great significance to a nation working for reform:

> "Mrs. Harding, had reserved the examination and removal of the Private Office material for herself. With the aid of her own secretary, Laura Harlan, and the late president's military aide, Major Ora M. Baldinger, she labored at this task from August 11 to August 17. *Her objective seems to have been the destruction of any material which might have proven harmful to the memory of her husband. According to Major Baldinger, she burned some of the papers there. The rest were packed and shipped to Marion in wooden crates . . . .*
>
> "Major Baldinger, who was granted an extended leave of absence from the Army to assist Mrs. Harding in Ohio, later recalled that the next six weeks were spent working in the offices of the Marion *Star,* where the papers shipped from Washington had been transferred. *With Mrs. Harding alternately designating individual items or entire folders for destruction, the total number of wooden crates was reduced to two.* In the process, any semblance of numerical order was completely obliterated.

> "The amount of files destroyed by Mrs. Harding cannot be accurately ascertained; though gaps in the file numbers of the private office papers do indicate that she may have burned as much or more than half the material available to her."

Lentz, *The Warren G. Harding Papers* (1970), Ex. DD at 3 & n.3 (emphasis added).

g. *Franklin D. Roosevelt.* President Roosevelt exhibited particular concern that his papers be preserved intact so that the Federal Government and the public would have access to them. Thus, President Roosevelt left all his papers—presidential and nonpresidential, public and private—in a single archive controlled by the Federal Government. *See* H. G. Jones, *The Records of a Nations, 144-51 (1969). Roosevelt recognized the advisability of such an action and also recognized that his presidential papers were public in nature:*

> "I have been taking the advice of many historians and others. Their advice is that material of that kind [*i.e.*, Roosevelt's papers] ought not to be broken up, for the future. It ought to be kept intact. It ought not to be sold at auction; it ought not to be scattered among descendents. It should be kept in one place and kept in its original form because, *Presidential papers and other public papers* have been culled over during the lifetime of the owner, and the owner has thrown out a good deal of material which he personally did not consider of any importance which, however, from the point of view of factual history, may have been of the utmost importance." 7 *The Public Papers and Addresses of Franklin D. Roosevelt* 630 (1941).

h. *Harry S. Truman.* President Truman took advantage of the Presidential Libraries Act to arrange for Executive Office papers generated during his administration to be stored at the Truman Library in Independence, Missouri. *Truman himself was very clear that papers*

generated by the White House were the property of the Government and should so remain:

> "President [Truman] feels strongly about . . . [officials who attempt to take government papers with them upon termination of their official status]; he has for a long time. The public papers of any top official from the President down, should remain the property of the Government, he holds." *Christian Science Monitor,* January 29, 1947, p. 7.

* * *

The foregoing descriptions are not intended to be exhaustive. We believe, however, that they make it clear that plaintiff's assertions that every President has regarded *all* papers and historical materials accumulated in the White House as his own *exclusive* personal property are simply incorrect.

[Caption Omitted in Printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Richard Nixon, the plaintiff above-named, hereby appeals to the Supreme Court of the United States from the final order entered in this action on January 7, 1976 denying plaintiff's request for a preliminary and permanent injunction and dismission the complaint.

This appeal is taken pursuant to 28 U.S.C. §1251.

/s/Herbert J. Miller, Jr.
HERBERT J. MILLER, JR.

/s/Raymond G. Larroca
RAYMOND G. LARROCA

/s/William H. Jeffress, Jr.
WILLIAM H. JEFFRESS, JR.

/s/R. Stan Mortenson
R. STAN MORTENSON
DATED: March 4, 1976 MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
Counsel for Plaintiff

[Caption Omitted in Printing]

MOTION TO AMEND THIS COURT'S ORDER OF JANUARY 7, 1976.

Defendants United States and the Administrator of General Services,, by their undersigned attorneys, respectfully move the Court for a modification of the Order of this Court dated January 7, 1976, to permit the transfer of the Presidential Materials of the Nixon Administration to the Washington National Records Center in Suitland, Maryland and to take other preservation measures, described in the attached affidavit. Such actions are necessary to prevent the deterioration of the tapes and documents. In support of this Motion, the Court is respectfully referred to the Affidavit of James B. Rhoads, attached hereto, and the Points and Authorities in Support of Defendants' Motion to Amend this Court's Order of January 7, 1976, filed herewith.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

IRWIN GOLDBLOOM

DAVID J. ANDERSON

JOHN T. BOESE
Attorneys
Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 739-3385
Attorneys for Defendants

[Caption Omitted in Printing]

DISTRICT OF COLUMBIA)
ss.:
CITY OF WASHINGTON)

I, JAMES B. RHOADS, Archivist of the United States, National Archives and Records Services Administration, being duly sworn, in support of defendants' Motion to Amend this Court's Order of January 7, 1976, hereby say and depose as follows:

1. As Archivist of the United States, I am the administrative head of the National Archives and Records Service (NARS), a part of the General Services Administration (GSA). I joined NARS in 1952, and began working in what is now titled the Office of the National Archives, that segment of NARS responsible for the preservation and public availability of the permanently valuable records of the Federal Government. I served in the Motion Pictures and Sound Recordings Section, the Cartographic Records Branch, the Exhibits and Publications Branch, and the Diplomatic, Legal and Fiscal Branch. In 1964, I was transferred to the Office of Presidential Libraries, that segment of NARS responsible for the administration of NARS' Presidential library system. There I was involved with identifying and having microfilmed for the Kennedy Library official records pertaining to the important issues, policies, and programs of the Kennedy Administration. In 1965, I was promoted to Assistant Archivist for Civil Archives and in 1966, to Deputy Archivist of the United States. I was appointed to my present position in May of 1968. I am a member of several professional organizations and, in addition to my Bachelors and Masters degrees, I was awarded a Ph.D. degree in history by the American University, Washington, D. C., in 1965.

2. During the months of August and September 1974, the historical materials of the Nixon Administration were collected from various staff offices and filing locations in the White House and Executive Office Building, assembled in various rooms in the Old Executive Office Building, and there readied for shipment out of the White House complex. Other portions of the Nixon historical materials that had been stored in the National Archives Building were also prepared for shipment. Before that shipment was undertaken a restraining order was issued by this Court, which restraint continues to be operative, protecting the materials from unauthorized disclosure and specifically preventing their transfer. Consequently, the materials have remained for 1 1/2 years in a condition intended to be of only short duration, i.e., packed for shipment.

3. It is my considered professional opinion that the presistence of this condition increasingly threatens the physical preservation of these historical materials. The weight of boxes strapped on pallets crushes the boxes on the bottom; the atmosphere in the various rooms is not well controlled as to temperature and humidity; and tape recordings that have not been rewound in so long a period of time are in danger of deterioration.

4. In order to alleviate these conditions, the National Archives and Records Service has developed a plan to maintain custody of the bulk of this material at its records storage facility in Suitland, Maryland, just outside of Washington, D.C. This plan anticipates the transfer of most of the Nixon Presidential materials to a single, secure, atmospherically controlled storage area in the Washington National Records Center. The plan takes into account the fact that some materials may be retained at their present location pending completion of ongoing or prospective authorized accesses which would be adversely

affected by the transfer of these materials at this time. The plan includes provisions for taking such measures as are feasible to aid in the preservation of materials which temporarily remain at their present location.

5. In conducting the physical transfer, materials that are not in boxes must be packed and, as necessary, strapped on pallets. All pallets will be checked and secured. Pallets will be moved from the storage rooms and onto vehicles supplied by the Department of Defense for transport to Suitland. At all times during transmit, maximum security in accordance with existing court orders and national security regulations will be maintained. On arrival at Suitland, archivists of the National Archives and Records Service will direct the placement of material on shelves and record the location on a register.

6. To provide suitable storage space in the records center at Suitland under conditions of guaranteed security, a portion of security classified vault #2 will be converted to an exclusive storage area for the Nixon Materials. The proposed Nixon materials storage area will be separated from the remainder of the vault #2 by a floor-to-ceiling wall of expanded metal. Access to the Nixon materials storage area will be controlled by a maximum security vault door. Inside this area is an office of approximately 500 square feet. The entranceway and office area will be separated from the shelved storage area by an inside grill fence and gate. Thus authorized reference service or project activity can be conducted within the office area while access to the materials can be specifically controlled and documented. (See Appendix A for procedures covering special access to the materials.) The material will be removed from pallets and stored on metal shelving. The total storage capacity of the vault to contain the Nixon material is 23,000 cubic feet. Should all of the Nixon materials eventually be shipped to

Suitland, I estimate they will require 20,500 cubic feet of storage space.

7. The vault area designated for the Nixon materials in the Washington National Records Center is temperature and humity controlled and equipped with a sprinkler system; we are installing a smoke and fire detection system. Preservation of paper materials will be advanced by removing the material from pallets and shelving the boxes to prevent further crushing. Badly crushed boxes will be replaced. The still photograph collection, presently boxed and strapped on pallets in the National Archives, is in critical need of inspection to determine the condition of negatives and unique positive prints. Such inspection may indicate further preservation steps to be taken on the photographs, such as storing them in protective sleeves and placing these in cabinets. The tape recordings will be reqound regularly (at least annually) and visually spot checked to determine the degree of deterioration present.

8. In my opinion, the steps set forth in paragraph 7 represent the minimum actions which should be taken at the present time to insure the physical integrity of the Nixon Presidential historical materials at issue in this litigation.

/s/James B. Rhoadds
JAMES B. RHOADS

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W., Washington, D.C., on this 19th day of March, 1976.

Francis J. Heppner
(Notary Public)
My Commission expires: August 31, 1979

[Caption Omitted in Printing]

ORDER

This matter having come before the Court on the Administrator's Motion to Amend this Court's Order of January 7, 1976, and the Court being fully advised in the premises and it appearing that the transfer of such materials, and other actions designed to protect their physical integrity, will in no way alter the custody of such materials by the Administrator or remove them from the jurisdiction of this Court, and it further appearing that such materials will continue to be accessible to authorized individuals as provided in this Court's Order, it is by this Court, this 15th day of April, 1976,

ORDERED that the Administrator is permitted to move all Nixon Administration Presidential Historical Materials to the Washington National Records Center, Suitland, Maryland, and to perform such acts, described in the Affidavit of James B. Rhoads, attached to the aforesaid Motion, as are necessary to protect their physical integrity.

/s/Carl McGowan
UNITED STATES CIRCUIT JUDGE

/s/Edward A. Tamm
UNITED STATES CIRCUIT JUDGE

Aubrey E. Robinson, Jr.
UNITED STATES DISTRICT JUDGE

DATE: April 15, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON, Individually and as the former President of the United States,

Plaintiff,

vs.

Administrator of General Services, et al.,

Defendants

No. 74-1852
Deposition of
RICHARD M. NIXON
VOLUME I

Deposition of Richard M. Nixon, plaintiff herein, called by Defendants in Intervention pursuant to Notice of Taking Deposition, on Friday, July 25, 1975, at San Clemente, California, before Joseph F. Weitzen, a notary public.

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EXHIBITS

DEFENDANTS' IN INTERVENTION EXHIBITS

A – A one-page document consisting of a memorandum for H.R. Haldeman from Gordon Strachan dated May 11, 1971, subject Timmons' Investigation of San Diego as 1972 Convention Site. 82

B – A document consisting of 124 pages listing names and contributions 84

C – A six-page document consisting of a memorandum dated April 23, 1969 from Richard G. Kleindienst, Deputy Attorney General, to John Ehrlichman, Counsel to the President, Re: ITT-Canteen Merger 86

D – A ten-page document consisting of a memorandum for Bud Krogh from John Dean dated July 20, 1971 with attachments 87

E – A four-page document consisting of a memorandum from George Bell dated June 24, 1971, for John Dean, Jerry Warren and Van Shumway, entitled, Subject: Opponents List 90

F – A three-page document consisting of a transcript of September 15, 1972 meeting 92

G – A three-page document titled, "Donation of Personal Papers to the Richard Nixon Library," dated November 1972 157

[1]

BE IT REMEMBERED THAT, pursuant to Notice of Taking Deposition, the deposition of Richard M. Nixon, plaintiff herein, was taken by Defendants in Intervention, before me, Joseph F. Weitzen, a notary public in and for the State of California, duly commissioned, qualified and acting, beginning at the hour of 9:00 a.m. on Friday, July 25, 1975, at the Coast Guard Station, in the City of San Clemente, County of Orange, State of California; Miller, Cassidy, Larroca and Lewin, by Herbert J. Miller, Jr., and R. Stan Mortenson, appearing on behalf of the plaintiff; William Dobrovir, Andra N. Oakes, Andrew S. Krulwich, Mark J. Spooner and Leonard B. Simon, appearing on behalf of Intervening Defendants; Irwin Goldbloom and David J. Anderson, of the U.S. Department of Justice, appearing on behalf of Defendant United States of America and Administrator of General Services; Kenneth S. Geller, Assistant Special Prosecutor, Watergate Special Prosecution Force, [2] appearing on behalf of Special Prosecutor, Intervenor; there being no other appearance; that said witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the testimony he was about to give; whereupon said witness was examined upon oral interrogatories propounded by counsel, and made answer thereto, under oath, as hereinafter contained; and the following proceedings were had:

THE NOTARY: This is now the time and place for the taking of the deposition of Richard M. Nixon, plaintiff

herein, called by Defendants in Intervention pursuant to Notice of Taking Deposition.

[3] RICHARD M. NIXON,

plaintiff herein, called by Defendants in Intervention, pursuant to Notice of Taking Deposition, and being first duly sworn, testifies as follows:

EXAMINATION BY MR. DOBROVIR:

Q. Good morning, Mr. Nixon.

You were President of the United States of America from January 20, 1969, to August 9, 1974? A. Yes.

Q. And what other public offices have you held? A. Congressman for four years; Senator for two years; Vice President for eight years; Deputy City Attorney, Whittier, California, for three years.

Q. And you are an attorney? A. No, I was. I resigned as a member of the Bar.

Q. You practiced as an attorney in the past; is that correct? A. I have practiced law in the past.

Q. As President of the United States, did you have familiarity with the various components of the Executive Office of the President? A. Yes.

Q. Do you include in the materials which you claim in this lawsuit all of the documents created by the Executive Office of the President during your tenure in office? A. I think it is necessary for the record to distinguish between the Executive Office of the President and Office of the [4] President.

With the Executive Office of the President, I am talking about a very broad spectrum of the office. For example, the Office of Management and Budget, the Council of Economic Advisors, and other institutions which are called or designated as being part of the Executive Office of the President, whereas the Office of the President itself is more limited than than.

The Office of the President is limited to those, and I refer now to the materials that we use in our Complaint. The materials for the Office of the President are only those that are generated throughout the government but which are sent to the President for his use in carrying out his official or other duties.

Q. When you refer to the Office of the President, are you referring to what is called the White House Office in the Official Organization Manual of the United States Government? The White House Office is the term used in the Organization Manual.

MR. MORTENSON: Excuse me, Counsel. Do you have a copy of the Manual so we can check that?

MR. DOBROVIR: I am afraid I didn't bring it with me.

THE WITNESS: I am not familiar with that term. I am sorry. I know what I consider the Office of the President to be, but I am not familiar with what the White House Office would be. I can describe it only in terms of its physical location and rooms that were used.

[5] BY MR. DOBROVIR:

Q. Let me run through a list of components and see which of those you consider to be part of the Office of the President, for purpose of our claim for materials in this case.

The Office of Economic Opportunity?

A. Go ahead.

Q. I am asking you, do you claim, as part of this case, the materials of the Office of Economic Opportunity? A. No, only if materials were prepared by the Office of Economic Opportunity for the President.

And so as to make your task easier, all of the other, and there are great numbers of offices of this type, the other offices, commissions, et cetera, et cetera, et cetera, which were set up, some of them were an independent

role, some were quasi-independent role, but all of them at one time or another may have had the opportunity to assist the President in the carrying out of his duties.

What I consider to be the Office of the President involves only those materials that are prepared by, as far as government materials are concerned, that are prepared by whatever office it is, the Office of Economic Opportunity or the Council of Economic Advisors or the Environmental Products Agency. I think I have got your list. You don't need to show it to me.

Q. Let me ask them one by one and if you could, just say "Yes" or "No," it would be helpful, as to whether or not you include within the materials claimed in this lawsuit the files of that component.

[6] The President's Advisory Council on Executive Organization? A. Only if the materials were prepared for the President.

Q. All right. The National Council—

MR. MORTENSON: Counsel, could I interrupt and make sure the witness understands. We are talking now about the files maintained by these respective agencies and not the materials sent by them to the President?

MR. DOBROVIR: Correct.

THE WITNESS: I made the distinction in my answer.

MR. DOBROVIR: I think the witness understands.

BY MR. DOBROVIR:

Q. The National Council on Marine Resources and Engineering Development? A. The same answer.

Q. The National Commission on Productivity? A. The same answer.

Q. The Office of Intergovernment Relations? A. The same answer.

Q. The Office of Consumer Affairs? A. The same answer.

Q. The Special Representative for Trade Negotiations? A. The same answer.

Q. The Special Action Office for Drug Abuse Prevention? A. The same.

Q. The Office of Telecommunications Policy? (At this time the plaintiff and plaintiff's counsel [7] confer.)

THE WITNESS: The same answer.

BY MR. DOBROVIR:

Q. The Office of Science and Technology? A. Let me explain. Where we are talking in each instance, talking about Federal agencies, Federal offices, the Office of Science and Technology, I think—

Q. I was talking before of the Office of Science and Technology. That was a component of the Executive Office of the President? A. The same answer.

Q. The Office of Management and Budget? A. The same.

Q. The Office of Emergency Preparedness? A. The same answer.

Q. And the National Security Council? A. The same answer.

Q. The National Aeronautics and Space Council? A. The same answer.

Q. The Domestic Council? A. Yes.

Q. The same answer? A. Yes.

Q. The Council on International Economic Policy? A. The same answer.

Q. The Council on Environmental Quality? A. Yes.

[8] Q. The Council of Economic Advisors? A. The same.

Q. Special Assistants to the President? A. Excuse me?

Q. The Special Assistants to the President.

The budget shows that in fiscal year 1972 there were thirty-six individuals who had the title and filled positions entitled Special Assistants to the President. My question is: Are the files accumulated by those thirty-six individuals included within the materials that you claim in this lawsuit?

A. Well, there would be a distinction there to the extent that such special assistants who had prepared materials in their own behalf, which they could do, and were not preparing materials for or at the direction of or for the use of the President, I would not consider those materials to be presidential materials.

As a matter of fact, some of those that were assistants to the President and those that have since left government take materials with them, those materials they consider to be their own.

Then on the other hand, materials prepared in their capacity for the use of the President in carrying out his official duties or other duties, I would consider to be presidential materials.

Q. A memorandum received by, let's say, Mr. Ehrlichman, from, let's say, the Attorney General of the United States dealing with antitrust policy stating this is what – this is a [9] hypothetical question – stating this is what we are planning to do with respect to development of antitrust policy, is that the kind of document that you include within the materials that you claim in this lawsuit? A. Well, in the case of – I cannot speak for all administrations, I can only speak for my own.

Q. That is all I am asking now. A. In the case of a memorandum prepared by the Attorney General for Mr. Ehrlichman, in effect he would be, in effect, preparing a memorandum review for Mr. Ehrlichman and for transmittal for review by me. I would consider a memorandum of that sort to be one of presidential material.

Q. Even though it was directed to Mr. Ehrlichman and nothing shown on its face and nothing on it that it was intended for your eyes? A. Yes. I say that because Mr. Ehrlichman, and this would be true of others, presidential assistants, not only in this administration but others, would have no power of decision to act on such a memorandum on an antitrust matter. That power of decision

would be mine as President or whoever happens to hold that office at this time or in the future.

Q. Now, in addition to the offices which I have named, which by no means do I intend to be or know whether it is a complete list or not, were there not during your administration a large number of ad hoc committees and commissions and task forces that reported to the President? A. Yes. Too many.

Q. Does the number two hundred fifty sound right? [10] A. Yes. It could have been five hundred.

Q. It could have been five hundred.

Now, do you include within the materials that you claim in this lawsuit the files of those committees, commissions and task forces? A. Only to the extent that the materials were prepared for me for the purpose of making a report to me, not materials that were prepared independently in terms of developing options for the committee and so forth and so on.

Q. If the sole function of the committee or task force was to prepare a report for you, would you consider that all of the files that they accumulated in the course of that work are included in your presidential materials? A. If I had appointed a task force, talking now about one other than like the Council of Economic Advisors, et cetera, which, of course, we inherit from previous administrations and presidents and customs, but if I had appointed a task force to make a particular study for me, then I would consider those files to be part of the presidential materials.

For example, if I appointed a task force, as I did on Population Control, and this was considered, and I should point out a task force which was appointed not because congressional action required it but because I, within my own office, decided that one should be appointed in order to carry out my official duties more effectively, then of course such materials prepared by that task force,

prepared for me alone as President, I would consider to be presidential materials.

Q. How about the files of the 1969 and 1973 [11] inaugural committees? A. The files of committees of that type I think throughout history have been considered, perhaps even more than any other files, as being particularly the materials which are the President's materials, because they have to do with his inauguration and they therefore are part of the materials that are made available to him.

Q. Now, turning to what you described as the Office of the President. Approximately how many employees did that office have during your tenure as President? A. I wouldn't know.

Q. Does the figure five hundred sound about right? A. It might be.

Q. Now, how many of the employees of the Office of the President had regular access to you for purposes of performance of their and your official duties? A. I can't give you a number. I would say any of those who needed to have access had it.

Q. Now, as President, can you estimate how much of your time was spent in preparing yourself written documents? A. I cannot estimate it in terms of a percentage of time. I can, perhaps, estimate it in terms of comparison with previous Presidents in this century.

When the presidency, as you know, became a much more burdensome office, in terms of various duties to be carried out, as you know there was a time in our history when presidential speeches might be better because Presidents like Lincoln wrote their own, Jefferson and so forth. In this [12] century, I would say I have spent more of my time preparing my own speeches and other public statements than any President since Woodrow Wilson. I would say he probably spent, in this century, more time than any other President for that purpose,

with the possible exception of Theodore Roosevelt. But I would suggest here again that it depends on the individual. It depends on what other duties he has.

When the country was younger, when the country didn't have the responsibilities that it has in the world today, when the government was much smaller, the President had the luxury of preparing speeches and materials and did so. I had always had the custom, before I became President, of doing virtually all of my own work. I carried on as much as I could on any important speeches; I did most of the preparation myself with very good assistance from staff suggestions. But when it came to the final drafts I had to do them myself.

I realize that I am not answering your question specifically. But I cannot at this time say I spent five percent of my time or a third of my time preparing speeches. I do say, however, that I spent a very great proportion of my time, more than any President in modern history, doing my own work, because it had been my custom. And I don't say that critically of previous Presidents, because it is very likely those who wrote speeches for them may have written better speeches than they would have for themselves.

Q. There were great demands on your time; isn't that so? A. Pardon?

[13] Q. There were great demands on your time? A. That is true, great demands on a President's time in this period when the United States has reached the status of a full-fledged world power, particularly when other powers that used to be in that category, for example the European powers, no longer can carry their share of the load.

Q. Were you required to spend as much as half of your time in meetings with other people or would it be more than half? A. I can't give you an exact amount.

Q. Would you say that a large portion of your time was spent in meetings? A. Oh, yes. Yes.

Q. More time than was spent in reviewing written documents or less? A. Oh, more. More.

Q. More? A. Yes.

Q. And more time than was spent in preparing your speeches and statements? A. Yes, although it depends on the period in which I was working. One month more would be spent in speeches and statements and another month more would be spent at meetings with people and so forth and so on.

Q. All right. In addition to meetings and telephone conversations with other individuals and reviewing written documents that were transmitted to you and preparing written statements or statements for delivering by you, in addition [14] to those three things what other things did you spend your time on, and I am talking only, of course, about in performance of your official duties? A. I traveled some.

Q. Anything else? A. You refer to other than meetings and preparing the speeches? I made the speeches.

Q. You delivered the speeches? A. That is right. And I, of course, had the usual protocol responsibilities that falls upon a President, all of which are, of course, a matter of public record.

Q. Right. Are you familiar with the Complaint in the action, sir, Mr. Nixon? A. Oh, yes.

Q. Now, are you aware that your claim encompasses what is estimated to be in the neighborhood of 42 million documents? A. Yes.

Q. Can you estimate what portion of those 42 million documents you have actually seen yourself? A. No. I am a relatively fast reader. I don't mean that I have taken a reading course, but I generally can look at a document and tell what needs to be read. I have never been one of those who insisted it almost all be on one page, because I wanted the full range of options and to see the kind of reasoning that the advisor had gone through in the reasoning process in order to reach conclusions.

I would say, without telling you how many of the 42 million I have read, only a review of the file and indication [15] by checkmarks on them could tell you that. And here again it is the difference between Presidents. Some tend to prefer to spend more of their time in public meetings and private meetings, as what I call doing things, and I prefer to spend a higher degree of my time, to the extent possible, in thinking about problems. So consequently, in the many days that I spent at Camp David, in Florida, and on occasion even here in San Clemente, I read enormous amounts of material in addition to the day-to-day flow of materials that came across the desk. And that is one of the reasons that the number of documents is so enormous.

As you know, the number of ducuments in the Johnson Administration was approximately 32 million for the same period of time. This is 42 million. That doesn't mean that our administration was better than his, I am not contending that. It only means that it was my instructions to my own staff and others to give me the broadest range of options before I made an important decision and also because of their awareness of the fact and some of them were surprised when they came in the office and found that I had read what they had put in. Their awareness of the fact that I was one who had the habit of learning more from reading, because you can read about three times as fast as you can listen than just from what we call a bull session.

Q. Would the number of documents that you, yourself saw be as many as one hundred thousand? A. Oh, at least, I would say.

Q. At least. That would be approximately 50 per day [16] for the approximately two thousand days of your tenure in office? A. Right.

Q. Does that sound about right? A. Well, I couldn't hold to the figure, but I would say that I would be sur-

prised if it were less than that and I would be less surprised if it were far more than that.

Q. Two hundred thousand? A. Yes.

Q. Does that sound right? A. I can't answer that question. Obviously I haven't counted the number of documents.

Q. Two hundred thousand would be one hundred a day. A. Could well be. Could be more.

Q. Three hundred thousand? A. Let's stop at two hundred thousand.

Q. All right. Now, we discussed a moment ago the fact that there were great demands on your time as there are on the time of any other President. Did you establish procedures designed to insure that you only were presented with the documents that were essential for you to read? A. Oh, yes.

Q. What were those procedures? A. Well, the procedures were to have advisors in various areas who would screen the flow of paper work coming into the President's Office or coming in for his, at least, consideration, and then to have those documents put into what I called my reading file. Some of them, of course, required [17] reading almost immediately. If, for example, a veto message was involved, something of that sort, where there was a time limit. Some of them might require – didn't have the same urgency – decision far down the line, and I asked for that too.

So in the field of foreign affairs I would rely on Dr. Kissinger to screen the great amount of material that came in from the various agencies who had interest in foreign affairs and that included others than the State Department, as you well know, and also from various private groups and private citizens who had views which I valued. I might not always accept them.

Mr. Ehrlichman, he was head of the Domestic Council, and Mr. Moynihan would screen the documents in that

field and the political area generally Mr. Haldeman might screen the documents. And I also had ways in which individuals who felt they couldn't get through the so-called Palace Guard could get to me directly. And a number of friends, former advisors, when I was a Senator, Congressman or Vice President or out of office and so forth, would send their materials to my personal secretary, Miss Woods. And a great amount of material came through her to me.

Q. So that Dr. Kissinger was responsible for screening foreign policy documents, Mr. Moynihan and Mr. Ehrlichman were responsible for screening what we can call generally domestic materials, Mr. Haldeman was responsible for screening political materials and then Miss Woods was a channel for communications from personal friends and other associates? [18] A. But the communications would deal not only with personal matters, sometimes they would, quite often they would, and most often they would be intermixed with personal and public matters. These would be communications from individuals, as I said, who felt that they might not be heard.

Now, in addition to that I should say, however, that the documents that reached me were not limited to those individuals and the so-called screening process was not all that precise. For example, Mr. Ziegler, the Press Secretary, would bring in documents that, and he had the right to at any time, that had to do with relations with the press. Mr. Harlow and later Mr. Timmons often brought me documents directly that had to do with relations with Congress. Needless to say, if an independent agency were involved, like Dr. Arthur Burns, he always came in directly and he sent his things directly, not through anybody else, because of his justifiable concern about the independence of the Federal Reserve.

Various cabinet officers, including Secretary of State Rogers, the Secretary of the Treasury, as well as heads of

independent agencies often sent documents in directly to me. Sometimes they would send them through Miss Woods and sometimes they would come directly into the office and hand them to me. And the reason for this is that there is always a feeling in any administration that you can't break through this, what is called, Palace Guard. I felt very strongly that I wanted to be sure that I had all options in front of me.

Q. Of the documents which you saw, would you say that a large number of them or a small number of them were designated [19] either specifically or de facto as "eyes only" documents?

MR. MILLER: Counsel, could you explain to me what you mean by "large or small," in the context of your question. I don't understand it.

MR. DOBROVIR: Let me try and ask it a different way, Mr. Miller.

BY MR. DOBROVIR:

Q. Were not most of the documents which you saw seen either before you saw them or after you saw them by other members of your staff? A. Well, I thought I answered that question as far as to whether most of the documents were seen before by other members of the staff. I would say perhaps that was the case, but I would have to look at the various documents to be sure, because a great number of documents came directly to me and not through a member of the staff. Because when a document, for example, came through my personal secretary or when it was delivered to me personally, needless to say that document was not being reviewed by the personal secretary, that was not her job.

Q. Now, Mr. Nixon, in your Affidavit you use a number of terms and I would like to ask you to define them for us so we have a bench mark for the rest of this examination.

In Paragraphs 9, 10 and 12 you use the term "political." Now, could you define the term "political" as used by you in your Affidavit.

A. It is difficult to separate political from official [20] and even from private. But the term "political" as we use it or as I use it in this Affidavit, I would say would have to do with the President's responsibility as leader, first of his own political party and supporting the candidates of that party to the extent that he was able to do so. Also the President's responsibility, and here is where you get some mixture, in carrying out his official duties to discuss what would be termed rather crass political matters. For example, I was the first President, as you know, I think in perhaps one hundred years who came into office with both houses controlled by the other party. It was impossible to carry on my official duties without having a very cordial and at times cooperative arrangement with enough leaders and if not leaders people who had followers within the other party in order to get legislation through or a veto sustained.

I would say that my activities therefore in carrying out my official duties of getting approval for legislation or support on a veto, matters of that sort, that it would be necessary for me to talk what I would call politics with Democrats as well as Republicans. What I am indicating here, in effect, is when I use the term "political," I do not limit it to that being partisan Republican leader. If I had been only that none of the great initiatives which we accomplished during our administration could have come about.

Q. In other words, are you saying that it is one of the normal activities of the President in performance of his official duties to take account of political considerations and made political judgments and in effect conduct politics? [21] A. It certainly is or he isn't going to be an effective President.

That was the tragedy of Wilson in his last years. The first term was a good one. His second, apart from his illness, was unfortunate because it became too partisan, he did not recognize the necessity to work with both parties.

Q. Would you define the word "personal," which you use in Paragraphs 10, 12, 13, 14, 16, 17, and 18. A. Well, here the word "personal" can to an extent overlap, needless to say, with political, because an individual who is interested in running for office may speak to a President with regard to his personal problems, with regard to the personal problems of his opponent and vulnerabilities thereof, and would present the matter, for example, to the President in somewhat personal terms.

I recall, for example, when certain members of Congress were trying to determine whether to retire or not. That, of course, is a political decision. They would be very candid and forthcoming in talking about their reasons for, with regard to their health, regard to family problems they had and with regard to financial problems they had and so forth. The latter part I would consider personal, the other I would consider political.

But as far as personal is concerned, generally speaking I am referring here to, needless to say, my family, to close personal friends, which include people within the administration, members of both parties, people in the Congress, representatives from all segments of American society, because [22] a President over the years before he becomes President, particularly while he is President, develops close personal associations and friendships with leaders of business and labor or religious leaders, educational leaders and many others of that type.

Q. Anything else under the category of "personal"? A. I think I have given you a general idea of it but if there is anything specific I will be glad to respond.

Q. I am just asking how you would define it, sir.

Another term which you use is the term "private," in Paragraphs 11, 12, 18, and 26, and in particular in Paragraph 26 you refer to materials which you "consider to be so private and confidential that no one else should participate in the initial review."

Would you define the word "private" as you use it there?

A. Well, private is encompassed in personal. The term "personal" is the broader term. Private would be, oh, conversations and communications that I would consider to be, that any President would consider to be totally confidential. Matters involving, for example, his own family, his wife and his children, his relatives, his very close friends and intimate friends. Needless to say, a private communication would be one involving those individuals or an attorney when he makes up his will. A private communication would, needless to say, also involve any conversations he might have with his doctor, with his minister, areas of that type. But I would also categorize those as being personal as well as private. [23] I mean I am suggesting that private is somewhat narrower, it is a part of personal but narrower in terms of the individuals that would be considered in the private category.

If I could point out, so that you can understand. I might have a conversation with possibly a political leader, a member of Congress, so forth, in which personal matters were discussed. Whether that would also be considered private would depend upon the nature of those matters.

Q. So we have some documents and conversations which you have categorized as private, as you have defined it, and some that you have categorized as personal, as you have defined it, and some that you have categorized as political, as you have defined it.

Now, in addition to those three categories is everything

else in the presidential materials which is not either political, as you have defined it, personal, as you have defined it, or private, as you have defined it, material that relates to the performance of your official duties?

MR. MILLER: Mr. Dobrovir, I would object to that question. I think you would have to go to the specific area that you are talking about and not try to block out some document that might exist in the 42 million documents that might fall in a different category. The question is so hypothetical I have great difficulty in understanding how it could possibly be answered.

MR. DOBROVIR: Let me ask the witness.

[24] BY MR. DOBROVIR:

Q. In addition to the three categories, political, personal and private, a fourth category I would call specifically governmental, unquestionably dealing with governmental matters, are there any other categories into which these documents might fall? A. I can think of none.

Q. Thank you.

Now, into which of those categories would fall your conversation on June 23 with H.R. Haldeman, with respect to Mr. Gray and Mr. Walters, the FBI and the CIA and their relationship to the burglary of the Democratic National Headquarters of Watergate?

MR. MILLER: Can we have the conversation, please.

MR. DOBROVIR: Do you want to be off the record?

MR. MILLER: I don't have a copy of it before me.

MR. DOBROVIR: Oh. All right.

The conversation I am referring to, I have here Appendix III to the statement of Information Hearings Before the Committee on the Judiciary, House of Representatives, 93rd Congress, Second Session, pursuant to House Resolution 803. I am not reading the rest of the title. A transcript of a tape recording on Page 39 of that volume, and I have reference to the conversation that

begins towards the bottom of Page 40 with the words "Now, on the investigation, you know, the Democratic break-in thing," and it goes on to Page 45 at the bottom with the word "Okay."

I am handing the volume to Mr. Miller.

[25] MR. MILLER: What is the question, Mr. Dobrovir?

MR. DOBROVIR: Which of the four categories, political, personal, private or governmental, does that conversation fall in?

MR. MORTENSON: Let me interrupt, Counsel. You are using the term "governmental" and I don't think that is a term used in the plaintiff's Affidavit. I think if you are looking for the terms that he used in the Affidavit, in his definition, that the fourth category as you separate them is items related to his official duties–

THE WITNESS: Presidential duties.

MR. MORTENSON: – and not governmental duties.

MR. DOBROVIR: I will accept that amendment.

THE WITNESS: We will have the whole record show that, because I know Counsel wants the record to be accurate,–

MR. DOBROVIR: Yes, indeed. I know the witness does.

THE WITNESS: Because we don't have a tape, obviously and can only rely on what we have here.

I would categorize this as political and to an extent personal.

BY MR. DOBROVIR:

Q. And no way related to the performance of your official duties? A. This conversation?

Q. Yes.

(At this time the plaintiff and plaintiff's counsel confer.)

[26] THE WITNESS: Like all conversations, this one

is intermixed, I see. I see here, for example, Senator Church is referred to and also Congressman Mills.

MR. DOBROVIR: What page is that on, where those two gentlemen are referred to?

THE WITNESS: Page 9.

MR. MILLER: Page 47.

MR. DOBROVIR: The conversation I specified begins on Page 40 and ends on Page 45 and ends with "Okay," on Page 45.

MR. MILLER: I don't see that in our document, Mr. Dobrovir. Would you care to examine it and point it out.

MR. DOBROVIR: Did I err?

MR. MILLER: It indicates "Okay," but then there is a question. Apparently that document contains a conversation that continues on past Page 45.

MR. DOBROVIR: The document contains some twenty more pages.

MR. MILLER: Are you taking two or three pages out of a conversation and ignoring the entire conversation? Is that it?

MR. DOBROVIR: I asked about that specific portion of the conversation. If the witness wishes to discuss other portions I have no objection.

MR. MILLER: All right.

MR. DOBROVIR: But is the witness' answer that the portion between 40 and 45, which I designated, was that personal and political?

MR. MORTENSON: If Counsel's question was limited to [27] those pages, I believe that the witness answered that as being political and personal. I think for clarity of the response, to say that the entire conversation looked at contains elements of all three.

MR. DOBROVIR: I understand.

THE WITNESS: The entire conversation was one about an hour. This is about five minutes. I think that is the problem we have.

MR. DOBROVIR: All right.

THE WITNESS: And I think the reason that Mr. Miller raised this point was the "okay" was not something you had marked "okay," but something that was in the file. There is no marking here.

MR. DOBROVIR: I didn't mark the page, I just asked you to—

THE WITNESS: No problem.

MR. DOBROVIR: Thank you very much.

THE WITNESS: I am just trying to expedite the matter.

BY MR. DOBROVIR:

Q. So that we have a complete set of bench marks here, you have defined for us political, personal and private and we have a fourth category I will call governmental, and which Mr. Mortenson corrected me to read as official. I wonder—

MR. MORTENSON: Let me correct the record again. I believe what I said in the Affidavit, the plaintiff has used four terms for categorizing the materials and one of which is materials related to official actions. I don't believe [28] anywhere in the Affidavit there is a reference to official materials.

BY MR. DOBROVIR:

Q. So the term is materials related to official action; is that correct?

THE WITNESS: I would insert in there, if I might, presidential materials related to official actions. Is that correct?

MR. MORTENSON: Yes.

THE WITNESS: That is the accurate description, I think.

BY MR. DOBROVIR:

Q. Can we have a definition, Mr. Nixon, of that term "Presidential materials related to official action." A. As a matter of fact, that is what we have been discussing as to the questions that you have asked up to this point.

Q. I wonder if you could give us a definition in the same way that you have defined the other terms. A. Presidential materials related to official action?

Q. Yes. A. Well, this would cover all of the official actions of the President; those imposed upon him by the Constitution and particularly, for example, the preparation of the State of the Union message; reporting from time to time to the Congress; the recommendations to the Congress for legislation; obviously the veto of such legislation; appointments made by the President, [29] which cover, of course, his Cabinet. But I would say in constitutional terms, as I recall the Cabinet is not referred to but by precedent it has become, through one of our precedents, Madison Marbury, one of the official responsibilities and perhaps even more important where lawyers are concerned, appointments to the judiciary and in addition to all the appointments the President makes as Commander in Chief of the Armed Services.

Q. And does it include those materials that relate to your general supervision of the administration of the Executive Branch of government? A. What do you mean by "general supervision"?

Q. Well, you are the Chief Executive. As President you were the Chief Executive of the United States; isn't that right? A. Yes.

Q. And in addition to appointing the Cabinet officers, you also were responsible, under the Constitution, to take care that the laws were faithfully executed, you were responsible for overseeing what all of these persons that you appointed did and how they carried out their duties; isn't that so? A. Well, it would be dependent upon what duties are involved.

As Counsel is quite aware, the Congress has moved into these areas in some instances and it says that certain duties shall be carried out by people in the Executive Branch independent of the President.

Q. Aside from those specific matters in which Congress has done that, you do have supervisory responsibility for [30] Cabinet officers and other appointees; isn't that so? A. Yes, that is true. That is true.

Q. Very well. Now then, included in the category of the presidential materials related to official actions, do we have documents that are prepared in or by an agency or a commission or a department with respect to its own functions, of which a copy is transmitted to the White House for the White House Staff and your information? A. Well, the situation here is that whether it would be a department or an independent agency or an ad hoc commission or special commission or what have you, except for those commissions that we delineated a moment ago, that are appointed directly for the President, for the purpose of reporting directly to him, that the records of those agencies are in those agencies and belong to those agencies. That is, when those agencies have recommendations to make to the President they, of course, come to him. But they, of course, retain in the agencies and they continue through other administrations as well.

Q. So those documents which come from agencies to the Office of the President or go from the Office of the President to those agencies are not considered part of your presidential materials?

MR. MILLER: Would you repeat it.

THE WITNESS: I think I have answered that three, four times but I will do it again for the fifth time.

MR. DOBROVIR: No, once is enough.

THE WITNESS: At least four times is enough.

Now, I don't mean to haggle about it, because it is

[31] a rather novel matter that hasn't been discussed before.

The way it happens, a specific department, the Secretary of Agriculture, the Agricultural Department, has a whole mass of paper work that is prepared in the Department. Very seldom does anything come to the President that has to do with the work of that Department unless it requires Presidential action or decision.

For example, a recommendation on the Food Stamp Program legislation, extension thereof, increasing it, or when we initiated it, what kind of program should it be. That is a matter that would come to the President.

But as far as the Department papers are concerned, materials are concerned, those are in the Department. It is only when a department or an agency, an independent agency or other agency has a direct responsibility or relationship with the President in the carrying on of his official duties, that whatever is prepared then becomes not only, I would say acquires basically a dual personality, if we are going to distinguish in this instance, because needless to say each department also keeps its copy and the original comes to the President.

BY MR. DOBROVIR:

Q. So is the copy in the department considered an ordinary agency document then? A. It is not quite ordinary. No, the reason if it were ordinary it would not come to the President. If it comes to the President, it takes on a different aspect.

Q. But the copy that remains in the agency is an agency [32] document? A. The copy that remains in the agency? Oh, I would think so; yes.

Q. Subject to all of the applicable Federal statutes? A. That have to—

MR. MORTENSON: Counsel, that calls for a legal conclusion that I don't think you have established that the

witness has the background to answer that.

THE WITNESS: Counsel is well advised. If I knew I would answer.

MR. DOBROVIR: Very well.

BY MR. DOBROVIR:

Q. Now, in your Affidavit, Mr. Nixon, you have specified certain interests that you are seeking to protect with regard to the materials that are the subject matter of this lawsuit and I find the following: The interest in nondisclosure of personal matters and private matters; the interest—

MR. MILLER: Would you give me a page on that, Mr. Dobrovir.

MR. DOBROVIR: I have Paragraphs 10 and 12 through 19.

BY MR. DOBROVIR:

Q. Then we have nondisclosure of political matters, to which I have Paragraphs 9 and 10. We have confidentiality of – let me get the right word – matters related to official actions and for that I have Paragraphs 7, 8 and 20; and I have [33] interest in preparation by you of your memoirs, for which I have Paragraphs 22 and 23; and the last one I have is the creation of a presidential library and the preservation of these materials for the use of scholars, for which I have Paragraphs 23, 24, 26 and 30.

Now, is there any other interest that is not listed in your Affidavit, which you are seeking to protect with regard to the materials.

MR. MILLER: Do I understand the question to mean is there any other interest other than what you have characterized the Affidavit as covering or the Affidavit itself, besides from your characterizations?

BY MR. DOBROVIR:

Q. Why don't we say any interest, other than those which I have specified, which is based on any interpretation of your Affidavit. A. No. I would say that I would stand on the Affidavit. It would be, of course, bad to answer questions with regard to your interpretation.

Q. Well, I don't want to be repetitious. But are you seeking to protect any interest in regard to the materials, in addition to the following five interests: First, the interest in nondisclosure of personal and private matters; second, the interest in nondisclosure of political matters; third, the interest in the confidentiality in matters relating to official action; fourth, interest in preparation of your memoirs; and fifth, the interest in the relation of a presidential library [34] and preservation of materials for scholars? A. Yes. Far more than that.

Q. Would you please give them to us. A. I would suggest counsel refresh his memory by reading the pleadings. The pleadings set forth other grounds, of course, and the Affidavit addresses itself only to certain specifics. But I would not want the record to show that the case, from the factual standpoint, is based solely on the affidavit.

Q. Can you tell me what other interests you are seeking to protect in addition to those five which I have listed? A. Do you have the Complaint, Counsel?

While they are searching for it, because you probably read it,—

Q. I am familiar with it. A. I would suggest having read the Complaint, that from Page 16 through Page 18 we list the reasons for the invalidity of the act and that, of course, the Complaint itself goes beyond that. But this is a summary of the reasons for the invalidity of the Act and are broader than the Affidavit. That is the only point I am making.

Q. I would like you to tell me what those additional interests are, please.

(At this time plaintiff and plaintiff's counsel confer.)

THE WITNESS: Well, this is perhaps covered better in the pleadings than I will cover it orally.

To me this suit involves, as the last paragraph of the Affidavit indicates quite clearly, not simply my interest [35] alone, the ownership question as far as presidential materials are concerned. My primary interest is the institution of the presidency itself and of the ability not only of a President but of any official elected or appointed at the Federal or State level to carry out his official duties.

In my view, from my experience, the carrying out of official duties involves, and this is more true of the President than anybody else but it affects members of the Judiciary, it affects Cabinet Officers, it affects members of Congress, Governors and State Legislators and even people down the line at the City and County level.

As far as public office is concerned, and particularly where the Presidency is concerned, the most important consideration is that he make the best decisions possible. Now, different Presidents have approached this problem of how to make the best decisions in different ways. I was influenced to an extent, I must say, not only by my rather extended experiences with President Eisenhower, when for eight years I saw how he made decisions, but by a conversation that I had just before I became President, just before my inauguration, with Dr. Arthur Burns, who had served in the Eisenhower Administration and in a consultative capacity for the administrations thereafter and who, before I appointed him as Chairman of the Fed, was my chief advisor in the domestic area. And Dr. Burns said that the problem with most Presidents and, of course, most officeholders, particularly Presidents, is that everyone who comes to see him, be he a staff member, Cabinet member, Congressman, Senator, business or labor representative or [36] what have you, tries first to find

out what the President wants or thinks and then does his best to present a case on all fours with what the President is thinking or wanting.

He said the most important prerequisite for good decision making is for a President to have before him all possible options, a wide range of options. And he said in order to get that kind of advice, first he said you must tell your Cabinet that, which I did at our first meeting. Second, you must tell your staff that, which I did very early in our administration, telling them in effect that I was interested in their views, that I could not always assure them their views would be accepted but that I wanted them to present their views with all the bark off so that I could, in making up my own mind, have the full range of options in front of me.

I also did this in my relationships with people outside of government, they were quite aware of this, which had frankly been my practice long before I became President and one which I implemented in many instances quite successfully when I was President. People outside of government were willing to write in what they might consider to be unpopular views, even views which in the light of history might prove to be stupid but they would do so usually only if they felt they were not going to be held accountable therefore in the public forum. They did so and I got advice of that type, because individuals knew I could keep a confidence and, of course, I felt that they could as well.

In my view this principle of confidentiality, which I realize is not in vogue these days in many quarters, is [37] indispensable for making great decisions. There would have been no opening to China without total absolute secrecy and confidentiality. Not because anything wrong was involved but because any leak would have destroyed the fragile framework that we had built up

over a period of years starting from the time I ventured that opinion, before I became President, in an article to Foreign Affairs.

There was a situation, there would have been also in the domestic field very great difficulty in implementing the program that we had for desegregation of schools in the south unless it had been done with some degree of confidentiality and the assurance so that a President could have candid, very frank discussions with people on both sides with regard to the problem and by gaining their confidence then be able to make decisions which would enable him to move forward on an issue.

There also comes to mind the new economic policy, which was announced on August 15th, 1971. It was developed in the first instance in a long conversation that I had with Secretary Connally in the Oval Office. It was discussed in great length in memoranda from people within the Administration who had diametrically opposed views and who wrote those memoranda to me, all of which I read, and who then when they were together, when we met at Camp David, expressed those views. I made the decision. The views resulted in the floating of the Dollar/Wage/Price Controls, the Freeze.

And the other matters, particularly the imposition of 10% Import Duty, as you recall, on foreign cars and so forth.

I give those two examples and there are others, [38] only to show that while the word secrecy is one to us in a free society is abhorrent, that in terms of decision making it is indispensable.

For example, the long and tortuous process which resulted in ending the Draft and ending the American involvement in Vietnam and ending the press of war required secret negotiations over many, many months. At any time had there been disclosure thereof or if at any time the individuals with whom we were in contact had

thought that their preliminary reviews would be made public, the American involvement I think would not have ended as soon as it did.

I am suggesting that as far as a President or any other officeholder is concerned that to the greatest extent possible not only his decisions but how he reaches those decisions should be made public. But I am also suggesting that, I know that if individuals who advise a President do not assume that their advice is going to be given in confidence they are going to be giving advice that has a eunuch quality. Some did anyway. But the best advisors I had, I must say, were those who expressed views far, far apart. And without belaboring the subject too much, the great debate over Welfare Reform which, as you know, I finally approved the Family Assistance Program. And in this instance, since it has become – oh, since it has now been written in a book by Mr. Moynihan, but long after the issue is no longer lively and therefore it is proper for him to write it, but in this instance my top economic advisors for Domestic Affairs were poles apart, but I had to see and hear their views in order to make what I believed to be the right [39] decision, even though it was not implemented by the Congress, if they had not felt they were expressing them in confidence.

And I speak here not only for my own office, my own tenure in office as an individual but for the Office of the Presidency in the future and for that matter for all of those who hold office, because once this precedent is established of appropriating not only the President's private thoughts and papers and diaries, et cetera, but also all of the information that comes in to him with the assumption that it is to be secret, once it happens here then inevitably, in my opinion, it will move on and affect future presidencies. It could move over possibly even to the Judiciary, very unlikely to the Congress because the

Congress, as you know, is quite jealous of its prerogative, in a sense.

Q. You are speaking of contemporaneous confidentiality, are you not? That it would have been destructive had there been a leak of your preparation to establish, to reestablish relations with China before the fact?

A. Oh, no. No. It affects the individual involved who gives the advice for years to come. Individuals like Dr. Kissinger, who was very active in those negotiations, will probably be, and I would hope he would be, in public service for many years to come. And the conversations that he had here, and I realize that under the statute there are certain safeguards that are provided for national security, but here again what we are talking about is how those safeguards are to be implemented. But you will find that as far as individuals are concerned, that they are thinking of their future.

[40] A Congressman or Senator doesn't give advice without thinking of what is going to happen to him in the next election or if he is planning to move up from House to Senate or from House to Governor or whatever the case might be he doesn't want anything spread in the public record that might later prove to him to be embarrassing, not in a personal sense but which would inhibit his freedom of expression.

As a matter of fact,–

Q. You indicated– A. Go ahead, interrupt.

Q. I am sorry, I thought you had completed your answer. A. I don't mind being interrupted, I am used to it.

Q. You indicated that you had no objection to Mr. Moynihan's revelations with respect to the Family Assistance Planning, because it was long after the fact; is that correct? A. Yes, that is true.

Q. Did you have any objections to Mr. Kissinger's revelation of conversations with you by his biographers

Messrs. Kalb, as they appeared in their biography of him? A. No. I frankly haven't had an opportunity to read those.

Q. I see. Did you forbid Mr. Safire to report conversations with you that he had attended in his book Before the Fall or was there no objection to those disclosures? A. It is inevitable that individuals who are in the administration, who leave it, are going to write their memoirs with regard to their role in the administration and they will see it from their vantage point.

[41] Mr. Schlesinger did in his Thousand Days and Mr. Sorensen did and others will do so. So as far as I am concerned, but that is far different from what the statute provides. Each of them, like a fly on a wall, sees only or hears only part of the story. The full story is something else again and the full story is something that can only be obtained from the whole range of presidential materials that is the subject of this suit.

For example, I note the Reporter's Committee have placed apparently considerable stock in affidavits by Mr. Novak and Mr. Lisagor and that after all they are ready to release anything, why should they worry? I am shorthanding what I understand the advantages are.

Let me say, I have great respect for both of those individuals as being good investigative reporters. They think they know but in some instances what they know is inaccurate and in other instances – and in all instances it is only a very – it is only a part of the story. A good newsman has the responsibility to develop, as he can, his so-called sources just as a good – as any individual attempts to develop a line of communication with individuals that can be helpful to him. But as far as those that we call "leaders" are concerned, anybody who is sophisticated in the political area and who has been in it as long as I have is usually able to make a pretty good guess as to,

when he reads an article which does contain a leak, who the leaker is and his remedy, while it is not a legal remedy, is a very effective one. The individual who is a leaker doesn't find out things in the future.

Q. Did anyone who participated in conversations about [42] what you describe in Paragraph 20, and let me get the page because that is a long paragraph, Page 15, which you describe as "dramatic changes in foreign policy" and conversations with respect to crucial domestic issues, if any individual stated specifically that disclosure would inhibit that person from giving what you say or what you describe in your Affidavit as "free-wheeling, candid, and often blunt or critical advice."

A. It was implicit in the conversations that I had with them. After all, as I pointed out, I indicated for every individual who came into a position of responsibility with me and to several members of the house and several democrats and republicans, with whom I often talked in confidence, that they could tell me anything and it wasn't going to get out as far as I was concerned. Sometimes it got out as far as they were concerned.

Now, I would say also, in answer to your question, that it had an enormously inhibiting effect on what a foreign leader might say to a President of the United States. I had the custom of what is called a "one-on-one." It was not always followed. Sometimes we would have what we call plenary sessions.

Q. Sir, let me interrupt. A. Let me finish the answer, then you can interrupt. I found that because I had developed a reputation, going back over twenty-five years, of never disclosing a confidence, or at least not knowingly doing so unless I had the implied or expressed permission of that leader, that that leader would talk very frankly with me. It was on that basis that we were able to develop not always a friendly relationship but at least a

relationship of negotiation rather than confrontation with [43] the People's Republic of China, with the Soviet Union, leaders of the Mid-East, with the leaders of Europe as well as other nations throughout the world, and that is invaluable to a President. I know, for example, that when what we call the Pentagon Papers came out, that we received a number of cables from countries abroad concerned that their private conversations and so forth, even though they dealt only with the war in Vietnam, it might become public. The same is true when the so-called – what has been called the taping system, not so-called, it was a taping system, became known. This had a chilling effect, certainly in terms of what they might say in the future. And, of course, having in mind that this legislation, potentially due to the fact that it set up a commission to deal with future presidencies, that this legislation would tend to open the door for further disclosure in future presidencies, and probably even in past presidencies, of what had been assumed to be confidential information, I think will inevitably have a chilling effect not only on those who advised the President, but also on those who, I might suggest, and I am speaking of those who had advised the President in his official family but in the broader context of the political arena, House and Senate and Governors, et cetera, in the private sector, and I cannot emphasize in terms of the President's foreign policy responsibilities, even in the foreign policy area, recognizing that the legislation purports to cover the National Security area in a way that would not inhibit in that concern but also recognizing that as far as any individual is concerned, while they might trust a President or former President's discretion with regard to revealing a confidential discussion, they [44] would not have the same confidence in a bureaucrat's decision on a matter of that sort. An example is, and this letter just arrived yesterday from an individual I haven't heard from perhaps

for one or two years, but I have known him as I entered public life twenty-seven years ago, Mr. Morris Ernst, and you can tell he is an old friend because he refers to me as Dick. He says "Dick, I see in the New York Times that there is an attempt to get from you your personal mail. You may recall that for some years I had put on the top of my letters, 'Burn before reading.' I am quite sure that I would have written differently if I would have thought that my random letters would have become public. Best regards. Please return all my letters."

Now, that is we take a Morris Ernst, we take, for example, one in the economic community who is not a favorite with the liberal economists, Pierre Renfret. What individuals like that would do in the future, with regard to giving their very learned advice to the President, I don't know, in the event that this legislation is upheld and then is made to apply to future Presidents. But I do know this, that to me, in the conduct of a Presidency, it has been invaluable to have views on the domestic scene, in the foreign scene, from the broadest possible spectrum. That is one of the reasons why when people have come into my office I have the reputation of being the devil's advocate and I will present a view as being my own, remembering what Dr. Arthur Burns told me, to see whether the individual concerned is there just to pander to the President's views or to express his own. Good lawyers do the same thing.

[45] I am convinced, as far as future decision makers are concerned, that the quality of the decisions will reach the lowest common denominator in the event that the confidentiality of the discussions that takes place is impaired and inhibited or for that matter destroyed.

Q. I take it the answer to my question, which was: Did anyone ever specifically state that the disclosure of the conversation would inhibit them from giving candid

and blunt or critical advice? And the answer was "No, it was implicit"?

A. I read this letter from Mr. Ernst from the outside. I would say, and I know Counsel would not want to try to put words in my mouth, but I used the word "implicit" but then went on to say that because I had so informed my staff and because I had a reputation over the years of being, frankly being very closemouthed about advice that I had received much, incidentally, to the disgruntlement of the members of the press, because they felt that all of the foreign and domestic policies and advice that inevitably goes on, conflicts and competition in the official family, should be presented in the public record. Some should, sometimes it is healthy, and some should not. And in the cases where it should not be spread in the public record is where an individual who gives advice, thinking it is going to be confidential and then feels that he would be inhibited from giving such advice in the future if he stays in an advisory position, if we want to talk about his First Amendment Rights, I would think that he would feel very concerned that he would be embarrassed politically, not embarrassed personally, by the fact that he had written or expressed views [46] that historically later seemed so outlandish at the time.

Q. Mr. Nixon, the deposition will be shortened considerably if you can just answer my questions as asked. Obviously you are entitled to explain your answer, but I hope that we can move on a little more rapidly now.

MR. MILLER: My silence is not an indication that I accept your characterization of it. It seems to me the answer was precisely what you called for.

THE WITNESS: As I recall, Counsel asked me if I had any other selected areas outside of the deposition. He said is your case based only on this and I proceeded to take one area which went far beyond that. Now Counsel

can go on with specific questions and get specific answers.

MR. DOBROVIR: I will endeavor to do that.

BY MR. DOBROVIR:

Q. In your affidavit, on Page 13, you refer to a conversation with "the ranking minority member of a House Committee." And you state "I do not believe the ranking minority member would have felt free to discuss this delicate situation if he had believed that his communication would later be made public."

Did the ranking minority member say that to you?

A. Say that to me?

Q. Did he say that he would not have felt free to discuss this delicate situation if he would have believed that his communication would later be made public? A. Let me read from the Affidavit.

[47] Q. Please. A. It was important that I be aware of this in order to be in a position to determine what course of action I should take as to particular legislation. I do not believe the ranking member would have told me or discussed this delicate situation if he had believed that his communication would later be made public.

Q. My question was: Did he say that he would not have felt free to discuss the situation if he had believed that his communication would later be made public? A. I have no recollection of his having said that, but I am confident that he would not have said it because we had that kind of relationship.

Q. Thank you. A. And also it would have destroyed him politically if it had been public, self-interest would be involved.

Q. Was that conversation taped? A. It was.

Q. Did he know it was being taped? A. No.

Q. Was the principle of confidentiality to which you referred, breached by John Dean in his testimony before

the Senate Watergate Investigating Committee? A. I think, as I recall, that I waived the attorney-client privilege in his case. He was counsel to the White House, as you may recall. They asked for a waiver and I gave it, I granted it. Obviously the attorney-client privilege does not hold once the waiver of confidentiality is not an issue.

[48] Q. Did you not state, on April 29, 1974, and I am quoting from your speech to the nation on television that "I am making a major exception to the principle of confidentiality, because I believe such action is now necessary in order to restore the principle itself, by clearing the air of the central question that has brought such pressures upon it and also to provide the evidence which will allow this matter to be brought to a prompt conclusion"? A. Yes, I made that speech.

Q. Do you still hold to that view, with respect to the events commonly denominated as Watergate? A. Yes.

Q. Then do you agree with the Congress of the United States that there is a need to provide the public with the full truth at the earliest reasonable date of the abuses of governmental power, popularly defined under the generic term "Watergate"? A. Do I – may I have the first part again.

Q. Do you agree with the Congress of the United States, that there is a need to provide the public with the full truth at the earliest reasonable date of the abuses of governmental power, popularly identified under the generic term "Watergate"? A. Would you like to be more precise as to what is popularly known as "Watergate," apart from the so-called legal matters that are in the courts? Do you want me to comment on those?

Q. I am referring to Section 104-A1 of the Act which you were challenging in the lawsuit as unconstitutional, an act which was signed by President Ford.

[49] MR. MORTENSON: Counsel, it is a matter of the position taken by Counsel for plaintiff that the term is not reasonably definable and you ask this plaintiff whether he agrees with what Congress states. If it is not reasonably definable, that puts him in an impossible position to answer.

MR. DOBROVIR: Let me try and ask it another way then.

BY MR. DOBROVIR:

Q. Do you believe that the full story of the activities carried out by you and members of your staff, that had to do with the concealment of various aspects of the Watergate matter should be made public in their entirety? A. The Affidavit, I believe, answers that question, pointing out that we have cooperated with the Special Prosecutor and as of this time we have satisfied all of the requests of the Special Prosecutor for documents, tapes, that he has made. In addition, of course, I have given testimony to the Special Prosecutor Task Force on a number of the issues other than those covered by the matters currently in court.

So my answer to the question is that in view of that cooperation, I believe we have complied with the spirit of the statement that I made on April 29th and also with the Congressional statement that you have just read.

Q. Do you believe that the public at large, as opposed to the Special Prosecutor, has a right to know the complete story?

MR. MORTENSON: The full story of what?

MR. DOBROVIR: Watergate.

[50] MR. MORTENSON: What do you mean by "Watergate," Counsel? The building?

MR. DOBROVIR: No, I mean by Watergate, I am asking the question in this sense: All the activities that occurred after June 17, 1972, up through August 9,

1974. I only use that date because that was the date Mr. Nixon resigned from office. Relating to what is popularly described as the "cover-up."

Now, if the witness knows what I mean by that, I would like him to answer the question.

MR. MILLER: The witness may know what you mean but I don't.

MR. DOBROVIR: Well, if the witness knows, I would like the witness to answer. A. Counsel has given you the answer.

BY MR. DOBROVIR:

Q. Counsel has said Counsel doesn't know what is meant by "Watergate." A. If my Counsel doesn't, I would never put my wisdom above his.

Q. Do you know what is meant by "The Watergate cover-up"? A. I know what several people have written.

Q. Can you tell me what you understand it to mean? A. I can only tell you that we have cooperated with the Special Prosecutor in all of his requests and that insofar as any activities on my part are concerned, that they have been disclosed to the Special Prosecutor, who is responsible in this [51] area. And beyond that, I have nothing further to add.

MR. MORTENSON: Counsel, you are putting the plaintiff here in an impossible position to answer your questions, because of the fact that in cooperating with the Special Prosecutor's Office and providing the Grand Jury, through the Special Prosecutor's Office testimony and documentation, that that material becomes subject to the Grand Jury's proceedings and the laws regarding disclosure thereof. And to ask the plaintiff if he believes the American people should have access to these items, which pertain to what we don't seem to be able to extract as a definition of Watergate, would require him to conclude that he disagrees with the laws that provide for

secrecy of the Grand Jury. And I think that is an impossible task for him.

MR. DOBROVIR: My question and the whole examination relates not to what the witness has stated to the Grand Jury or to any other law enforcement body, but rather to what is contained in the presidential materials that are the subject matter of this lawsuit, Mr. Mortenson.

Let me try another definition, what I am talking about, to see if this will help the witness to answer.

BY MR. DOBROVIR:

Q. Do you believe, Mr. Nixon, that the public is entitled to full disclosure of everything that is in the presidential materials, that relate to the break in at the Democratic National Committee Headquarters on June 17, 1972, and subsequent efforts by anyone to conceal the involvement of the Committee for the Re-election of the President, with that [52] break-in.

A. Well, the answer to your question at this point is not at this time, in view of the legal proceedings that are underway and in view of, as we have already indicated, when I speak of legal proceedings, including the Grand Jury proceedings. However, I would anticipate that in the future, that in the presidential library, that all of these matters would be made public, because they are not in the provided – they were not in the category of the – let me put this more precisely.

These matters, in which there was a public interest since the tapes as well as the documents, et cetera, would be delivered to the library. It would be my intent that, except where there would be a violation of the guidelines, that former Presidents under the Presidential Library Act of 1955, which passed when I was Vice-President of the United States, and that under those guidelines that mat-

ters involving Watergate would be among those made public.

I should point out what we are talking about here is, well, of course of great public interest, in view of how much has already been made public and in view of the present status of the matter. I find that less than one percent of the presidential materials, the number 42 million documents, conversations and so forth, is Watergate-related in any respect. But we are not talking about a great deal of material.

Q. If I can summarize your answer. You are saying that you agree it should be made public but not at this time?

MR. MORTENSON: I think the answer stands for itself in the record as stated. If you want the reporter to read it back [53] so you can get it,–

THE WITNESS: The reporter can read it back.

MR. MORTENSON: Let that stand in the record or not to agree or disagree with your characterization.

BY MR. DOBROVIR:

Q. When do you think that this material should be made public? A. Pardon?

Q. When should this material be made fully public? You said not at this time. A. Hell, first of all we have to get the decision made with regard to this action that we have brought so that I can have the opportunity to obtain the material and to segregate those portions that are private and personal. And, of course, whatever portions that might involve the national security there has to be a check.

I notice, for example with regard to tapes, that President Johnson placed a 50-year limitation, as you probably know, with regard to his tapes.

Q. My question is still with Watergate. A. I am not quite through and I have not interrupted Counsel in his,

Counsel's questions. And if Counsel will show me the same regard I would appreciate it.

President Johnson has placed a 50-year limitation with regard to any materials that were on tapes and now that he has passed away, of course whether or not members of his family or others may decide to move before that time, to make [54] some of them public, remains to be seen. But I think that is too long.

In the agreement that I have, that I will eventually work out, the letter of intent with the University of Southern California and so forth, I intend to provide for making first, of course, for proper review of the tapes, which can only be undertaken by me and members of my family, because of the private and personal conversations that are there and for making them public as soon as those reviews are completed.

MR. MORTENSON: Let us take a brief recess.

(A brief recess is taken at this time.)

BY MR. DOBROVIR:

Q. Let me ask the question then, Mr. Nixon. Do you have a time period that you expect, within which to make full disclosure of all the Watergate matters? A. No.

Q. Do you expect it to be longer than five years? A. I can't tell until I see how big the task is. Most of the tapes are not as audible as the one you played at that cocktail party.

Q. How long do you expect it will take for you and the members of your family to review all the tapes, Mr. Nixon? A. I don't know. But we will do it as expeditiously as possible.

Obviously, as Counsel is aware, we won't have access to the tapes until this case is decided, which, as I understand, at the earliest will be next spring. But by that [55] time the tape review process could begin and I have some ideas as to how it could be expedited and I do want,

because of the great interest in the tape material, I want it to move as quickly as possible. What is the Supreme Court's statement? With all deliberate speed. A little faster than that, particularly as it applies.

Q. But only yourself and Mrs. Nixon and your daughters will be listening to the tapes; is that correct? A. Yes. Well,–

MR. MILLER: May I ask, Counsel, what the relevancy of the time period is to this lawsuit?

MR. DOBROVIR: Well, we are discusing a section of the statute with which Mr. Nixon disagrees, which provides that the public should be provided with the full truth at the earliest reasonable date. And I am just trying to get some information.

MR. MORTENSON: Counsel, you are characterizing–

MR. DOBROVIR: Let me finish. Please don't interrupt, Counsel, we must have this evenhanded – so that we can have some basis for understanding what the witness' plan is with respect to the time frame for release of the full story of Watergate.

MR. MORTENSON: I don't believe that your characterization of his agreement or disagreement with the statement contained in the statute is accurate and I just want the record to reflect that.

BY MR. DOBROVIR:

Q. Do you believe that the President has an ongoing constitutional responsibility to protect the confidentiality [56] of communications? A. I certainly do.

Q. And does that responsibility extend to communications with former Presidents – of former Presidents? A. It always has.

Q. And did you not seek to protect that interest when you sought, when you authorized the litigation to prevent the publication of the Pentagon Papers? A. Yes, that is correct.

I should point out that from a political standpoint, some of the members of my staff totally disagreed. In fact, most of them were against my decision to litigate on the Pentagon Papers matter, because it was no skin off our back. After all, when we came into power there were 300 men being killed every day and 550,000 in Vietnam at that time. We were drafting 34,000 a month, and this all reflects on the previous administration.

Well, the way I saw it was that far more important than who the Pentagon Papers may have reflected on, as to how we got in Vietnam and what we had done in Vietnam was the Office of the Presidency of the United States, that is why I felt that for the individual who removed the papers, top secret papers, although most of them were not particularly important some were vitally important, should not have been given a badge of honor and the paper that published them should not have received the Pulitzer Prize.

Q. But you felt it was part of your responsibility to protect the confidentiality of communications in the Kennedy and Johnson Administrations; isn't that correct?

[57] (At this time plaintiff and plaintiff's counsel confer.)

MR. DOBROVIR: I would like the record to show that Mr. Mortensen is whispering to the witness.

THE WITNESS: Yes. What Mr. Mortenson just pointed out to me was exactly the point that I was going to make and that is that what I was protecting here was the classification system itself. There were classified documents. If classified documents are leaked out in an administration and if no action is taken against those responsible for that leak, it becomes pervasive, confidentiality is destroyed and the ability to conduct the Presidency is seriously eroded. And this is particularly true in the foreign policy field. But as I say, it is also true in the domestic field

where you have such issues as Monetary Reform, International Trade, et cetera, involved.

BY MR. DOBROVIR:

Q. But it is the responsibility of the President, is it not,–

MR. MORTENSON: It is, is it not,–

MR. DOBROVIR: – of the President in Office–

MR. MORTENSON: – to protect classified documents?

MR. DOBROVIR: To protect.

THE WITNESS: I consider it to be that, to be my responsibility.

BY MR. DOBROVIR:

Q. And it is presently the responsibility of President [58] Ford, is it not? A. To the extent that he agrees with that, yes. Each President views the situation from his own likes. From my experience I had felt very strongly on this issue at that time. I should point out we were engaged in a very difficult war. That war slopped over at home and erupted into violence and was tearing the country apart. And I felt that at that time. Also we were engaging in initiatives not only to bring that war to a conclusion, as far as we were concerned, but initiatives to avoid that kind of action taking place in the future with those issues and for that reason I felt perhaps more strongly than even a peacetime President might feel, that confidentiality was absolutely imperative.

MR. MORTENSON: Counsel, let me interject for the record here that I object to the question as calling for legal conclusions of this witness. The record, I believe, made in this case is such that there is no claim that plaintiff, as a former President, claims the right, the duty under the Constitution, or statute, or any other basis, to either classify or declassify documents. And I believe that

it is a matter of law, the question of whether the encumbent Administration, the encumbent President is charged with the responsibility of protecting classified documents.

So to ask this plaintiff whether or not he views himself as having that responsibility or not is a matter of legal conclusion.

THE WITNESS: As I understood the question, the question related only to what was my responsibility at the time of the [59] Pentagon Papers and I intended my answer to be directed to that question.

MR. DOBROVIR: My further question–

THE WITNESS: Incidentally, could I ask, for the record, because I wouldn't want Counsel to feel we are violating any of the rules, I have, of course, no objection whatever to indicating that I consult with Counsel from time to time. Does Counsel suggest that is not to be allowed? What was the purpose?

MR. DOBROVIR: I have no objection to you consulting with your counsel with respect to such matters as to whether or not you are to answer a particular question or whether it is a proper or improper question. It is my understanding of the procedure in a deposition, however, that it is not proper for a witness to consult with his counsel with respect to the substance of the answer.

THE WITNESS: Well, I should point out to counsel that, as Mr. Mortenson has just stated, the question on which Mr. Mortenson was advising me was one that involved a legal interpretation as well as substance and many times it is not. But let me say on our part that I would like for the reporter to put down every time there is any kind of this thing so that Counsel does not feel that the record is inadequate in showing that I do consult with counsel. I will consult with counsel only when I feel there is a legal matter involved. But I have no objection

whatever to that and so Counsel need not raise that question again, I mean in any way that he wants.

Let's go forward with the questions.

MR. DOBROVIR: Thank you.

[60] THE WITNESS: At any time Counsel objects to my consulting with Counsel, I wish he would say so rather than making a remark as he did to the reporter, that let the record show that he consults with Counsel.

BY MR. DOBROVIR:

Q. On April 16, 1973, did you say to John Dean, and I quote, "Nothing is privileged that involves wrongdoing."

MR. MORTENSON: Counsel, let me interrupt. Is Counsel quoting from a document and if so let us enter the document into the record.

MR. DOBROVIR: This is a quote from Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, April 30, 1974. It is a blue book, paperbound, approximately two and a half to three inches thick and I am quoting from Page 802. I would be happy to show it to the witness if he would like.

THE WITNESS: I do not recall the conversation specifically. I would not affirm nor deny that is the case, but I do not recall the conversation.

BY MR. DOBROVIR:

Q. Do you believe the proposition to be true, the statement "Nothing is privileged that involves wrongdoing"?

MR. MORTENSON: Again, Counsel, I object to the question as calling for a legal conclusion of the witness.

MR. DOBROVIR: I am asking the witness to do no more than [61] tell me whether or not be believes that that is true or not. And if you are instructing the witness

not to answer, that is fine, we will let the record so reflect.

THE WITNESS: What is the definition of "wr g-doing"?

BY MR. DOBROVIR:

Q. I am quoting your words, Mr. Nixon. A. I am asking you, what do you say is wrongdoing? I don't know your definition.

MR. MORTENSON: Counsel, you are stating that, the witness has said he does not recall the conversation. You have then asked the witness whether or not he believes the general proposition and you have stated a general proposition. We need to know, in order to answer that, first of all because it calls for a legal conclusion, what interpretation of that proposition you are making.

MR. DOBROVIR: I am making no interpretation of the proposition. The question is clear. If the witness is unable to answer it as stated let the record so reflect.

THE WITNESS: Is Counsel's interpretation of wrongdoing an engraving in illegal activity?

MR. DOBROVIR: I have no interpretation of the word, I simply ask the question.

MR. MORTENSON: I will instruct the witness not to answer the question because it calls for a legal conclusion stemming from the Fifth Amendment and a variety of other privileges that might apply, depending on what your definition of the proposition is and you are unable to or unwilling to state that, so I cannot [62] let the witness speculate what that means.

THE WITNESS: I would like to add to that, even though my Counsel instructed me not to answer, as far as wrongdoing is concerned, I am not trying to debate with Counsel on the subject of what wrongdoing is and particularly in the present day, it is a very broad term that in the eyes of some is very limited. Lawyers usually inter-

pret wrongdoing as being matters of which involve breaking the law. Others might consider wrongdoing an American, for example, in 1945, as many of them did, supporting the de Gasperi Government in order to avoid a communism overthrow.

The point that I make is that in terms of wrongdoing, unless the question is put more precisely I shall have to follow counsel's direction in order to respond.

MR. DOBROVIR: Very well.

THE WITNESS: I can also say that I should also point out that not only with regard to the Johnson tapes, in which there is a fifty year, as you know, restriction with regard to their being made public but also with regard to the Kennedy tapes, of which there are several hundred in Hyannis Port, as I understand, they obviously, their families now, and the President's at the time that they set up there or made plans for their library, wrote their letters of intent, each have had a right to place such conditions on their release as they thought were proper.

Implicitly saying that as far as I am concerned, that I have always felt that an administration, after a President leaves office, a President or Congressman or Senator [63] or Vice President, should be very forthcoming with regard to the conduct of his office. And in my review of the tapes I shall, of course, follow that policy.

I should also point out that when Counsel earlier, as he very properly did, went into the subject of what is called the Watergate tapes, then, of course, limited it to what he called the Watergate cover-up, that here we have two different questions. First we have what is basically a legal question, and that is whether or not a President or former President should waive privilege, which I have done, where illegality is charged. We have done so. The Special Prosecutor has been appointed and we have cooperated with the Special Prosecutor.

Now, with regard to the situation on any further release of material in what is called Watergate, I want to leave no implication of any intention of what Counsel has referred to as cover-up or nondisclosure or what have you. However, I cannot at this time and will not violate the legal procedures with regard to a Grand Jury, with regard to defendants who are on appeal. And all that I can do is to cooperate with the Special Prosecutor, which we will do after that period is completed. Then I shall determine, but not the Congress, I shall determine what can appropriately be made public. And as far as that matter is concerned, I shall follow the same guidelines that all former Presidents since the Presidential Libraries Act was passed in '55, President Hoover, President Kennedy, President Johnson and President Eisenhower followed, except that I will be as forthcoming as possible, particularly with regard to the tape matter.

[64] BY MR. DOBROVIR:

Q. Do you claim – A. As I say, what I have just said I do not mean to imply any criticism of President Johnson and I don't know what President Kennedy's decision or his family's decision with regard to the release of their tapes. That is a decision for them to make, because those conversations, conversations that are more than anything else in the President's materials, are his and his alone not for profit but because they are so intimate because they go far beyond what a note taker might write and under those circumstances therefore the President should have a right to make a determination as to whether or not and how and when there should be a disclosure. And in my case I am indicating my own intent to disclose, to make public the tapes, having in mind the national security problem, the embarrassment, the private issue. By "embarrassment," I am speaking of personal embarrassment and not speaking of embarrassment with illegality, of course.

Q. With respect to the question of privacy and embarrassment, besides yourself who had knowledge of the taping system, that is when the taping system was in operation? A. The Secret Service operatives, Mr. Butterfield and Mr. Haldeman. I don't believe any others knew.

Q. Did Mrs. Nixon know? A. No.

Q. Did either of your daughters know? A. No.

Q. Did your personal physician know? [65] A. No.

Q. Did your attorneys know? A. No.

Q. Do you claim— A. Incidentally, my secretary didn't.

Q. Did not? A. No.

Q. Miss Woods? A. She didn't know.

Q. Do you claim, as part of the presidential materials included in this lawsuit, documents prepared by members of your White House Staff for their own use? For example, handwritten notes that Mr. Ehrlichman would take of meetings with you. A. For my use or his?

Q. For his use. A. Well, handwritten notes that he made of me would be made for my purpose and for my files. Those were the instructions. If he was the note-taker, those notes were made for me and they became part of the presidential materials. If on the other hand he was doodling, which he might often do, or making a note to himself, they belong to him.

Q. Do you claim as part of the presidential materials included in this lawsuit recordings that either Mr. Ehrlichman or Mr. Colson made of their telephone conversations? A. No.

Q. The answer was "No"?

MR. MORTENSON: Are you asking of all records?

THE WITNESS: What are you talking about? Recordings of [66] whose telephone conversations?

BY MR. DOBROVIR:

Q. The record is that Mr. Colson and Mr. Erlichman sometimes recorded their telephone conversations from their end and that those telephone conversations, after being recorded, were somtimes transcribed. I am asking you if those are included in the presidential materials which you claim ownership of in this lawsuit? A. I would have to differentiate. If the telephone conversation was a private conversation that they were having, with regard to their own business and so forth, that was one thing, that is theirs. If the conversation had to do with a direct presidential assignment for the purpose of the President, the telephone conversation and its transcription would be part of the presidential materials and in such instance the decision would depend upon the subject of the conversation.

Q. Do you claim – A. As I should point out, Counsel, I think the record will show that their conversations, that the only, I believe, made records of conversations on official business and not personal, but it could have been otherwise. I don't know. They never told me.

Q. But the records of conversations on official business are included in the materials which you claim? A. On official business having to do with the presidency, yes.

Q. Do you claim FBI records of electronic surveillance [67] of seventeen individuals, which was ordered in May of 1969, to be part of the presidential materials included in this lawsuit? A. Well, if any FBI records – I think perhaps we can shortcut just a bit here by going further than that. The FBI not only furnished such records but they furnished highly classified records whenever we made appointments to the Judiciary, to the Cabinet, et cetera. So-called raw files were sent to us and all of those, all of the record that the FBI made, where we requested them, I would consider part of the presidential material; yes.

Q. On April 30, 1973, did you order that the FBI records of the surveillance of these seventeen individuals be placed among your papers? A. I don't know. I can't recall it.

Q. All right. Do you claim as part of the presidential materials involved in this lawsuit documents transmitted to members of the White House Staff, not addressed to you, from foreign governments? A. Excuse me. Whether members of the White House Staff?

Q. Documents transmitted to members of the White House Staff not addressed to you, which came from foreign governments, do you claim that those are part of the presidential materials which you claim ownership of? A. It would depend again, Counsel, on the nature of the correspondence. For example, such correspondence would primarily come to Dr. Kissinger or sometimes General Haig and in most instances that I can recall, while the correspondence went to them, the correspondence went to them with the thought that it [68] was part of our ongoing dialogue and that it would be made available to me for my consideration. If it was correspondence of that type, yes, it is part of the presidential material. If it is, however, personal correspondence with regard to a trip of a member of the White House Staff, for example Mr. Rumsfeld took a trip to Europe which was part official and part personal, and Mr. Finch went with him. They had a lot of correspondence. I would not consider that unofficial correspondence as part of the presidential material.

On the other hand, their report on the trip, the conversations that they had and any communications that they had thereafter dealing with the substance of their trip, even though this was in a domestic area, would be presidential area.

Q. When you refer to correspondence addressed to you, do you mean correspondence addressed to you with

your name or as President, or do you also include correspondence addressed to your principal aides without specifically designating that it is addressed to you? A. The way it worked is that many private citizens in this country and some foreign officials often addressed their correspondence to an aide because of his desire to be sure that it came to my attention. If it was addressed just to me it might get in the mill and they felt, sometimes justifiably, it might not be brought to my attention, so it came both ways. But the substance of the correspondence would determine whether or not it was presidential material or whether it was their materials.

Q. Do you claim included in the presidential materials [69] in this lawsuit documents prepared by members of the White House Staff for internal use that were not intended to be transmitted to you and that were not transmitted to you which dealt with government business, their official business? A. It is very difficult to separate that out from official business, what we call presidential materials, because within the White House Staff there might be a memorandum that was written from one staff member to another but because the staff member, say at a lower level, might not think a memorandum written directly to the President would get to him. I recall one in particular, because it has become rather famous, a memorandum a Mr. Liddy, whom I didn't know, wrote to Mr. Bud Krogh, in which he recommended strongly that Mr. Hoover resign. Normally such a memorandum would never come to my attention, but Mr. Krogh showed it to Mr. Ehrlichman and Mr. Ehrlichman thought at least it was something I should consider and it came to me. I would consider that to be presidential material, because the purpose of the memorandum basically was to affect presidential action.

Any memorandum that is supposed to influence presi-

dental acts, presented by a staff member is presidential material.

Q. In Paragraph 23 of your Affidavit, you indicate as a reason for installing the tape recording system a recommendation that you received from President Johnson by way of a close mutual friend. And you indicate that President Johnson urged you to do so because the taping system he had installed had assisted him in writing his memoirs. Who was that close [70] mutual friend? A. Mr. Don Kendall.

Q. How did he communicate President Johnson's recommendations? A. Through Mr. Haldeman.

Q. In writing or orally? A. Orally. Basically I can explain it quickly and probably answer all your questions.

Mr. Kendall was a member of the Nixon Foundation and along with several others who were members of the Foundation visitied various presidential libraries and President Johnson graciously asked him to come visit, to give advice with regard to the libraries.

At the time they made their visit to the library, President Johnson in a discussion with Mr. Kendall, and whether others were present or not I do not know, at least in a discussion with Mr. Kendall I can say firsthand and not hearsay, said that he had noted, President Johnson had noted I had ordered all electronic equipment out of the White House. I think what he was referring to was the fact that I had gotten rid of the television sets and so forth and so on. And there was a lot of equipment I didn't know about, other equipment was there. But I said to clean it all out, we want to run our own show.

In any event, President Johnson said to go back and tell President Nixon that it is vitally important that he install or reinstall, what term was used I do not recall, but a system for taping, because he said he found it proved [71] invaluable in writing his memoirs and also he

thought very important in terms of a presidential library to have this kind of material in it.

Mr. Kendall came back and reported the findings of the Committee to Mr. Haldeman. Mr. Haldeman came in to see me. This I recall quite clearly, it was a very brief conversation, and he said President Johnson had recommended that we put in a taping system. And I said to limit it to the offices and not in the residences and no taping of staff members' telephones and so forth and so on, which apparently, at least I cannot say this for sure, but apparently had been part of the Johnson system. It has been alleged by some, whether that is true or not I do not know.

But in any event, the taping system was then installed, my memory, the reason I use Mr. Kendall's name here, is not that I independently recollected that Mr. Haldeman told me Mr. Kendall was the one who came in to see him but Mr. Kendall, oh, two, three months ago was a visitor here at my house and told me that he was the one that had recommended the taping system and for that reason I can say that Mr. Haldeman's recommendation to me had come from Mr. Kendall and Mr. Kendall had gotten it from Mr. Johnson. And Mr. Kendall recounted in detail his conversation with Mr. Johnson and Mr. Johnson's concern about my not having any taping system whatever.

Q. Did you ever speak to former President Johnson at any time subsequent to your receiving this communication? A. No, not about that.

Q. My question is: Did you ever speak to him at all [72] subsequent to that communication with former President Johnson? A. Yes.

Q. And in none of those conversations did you mention the taping system? A. No. I am sure he assumed we took his recommendation.

Q. But you never discussed the matter with him? A. No. Incidentally, when I saw President Johnson on two occasions in the period between the nomination and the election, he did not mention the conversation was taped. Also when I saw him and members of the National Security Council after my nomination but before the election, just as I saw Mr. McGovern and also Mr. Wallace, he did not mention that the Cabinet room was taped. It would have been quite interesting to have that tape.

Q. So one reason for installing the taping system was to have a record for your use in writing your memoirs; is that correct? A. That was a reason that Mr. Johnson, President Johnson had indicated to Mr. Kendall, was a good reason to put it in. I frankly was not thinking of writing memoirs at that time. I had in mind at some day I would. I had other things I was thinking of. This is early 1971. My reason for approving it was that was primarily because of the historical significance. I knew of it, particularly in the foreign policy area, of the conversations that were taking place and I felt having those conversations taped for purpose of history would be very, very useful and that it why it was done.

Q. That was the reason? [73] A. That was my primary motivation.

Q. Were there any other reasons? A. No.

Q. So that was the sole reason? A. I didn't say it was the sole reason.

Q. I am sorry, I don't want the record to be incorrect. You said it was the primary reason and I said are there any other reasons and I thought you said, "No." A. Well, Counsel, there is no reason to quibble. I said as far as memoirs were concerned, I wasn't thinking of memoirs specifically at that time, although I intended sometime to write memoirs. And President Johnson had indicated that he had found it very useful in the memoirs and certainly in my mind, thinking about reasons, President Johnson's

reference to memoirs must have been a consideration. My reason, primary reason, and we want to be quite precise, was that I felt that for historical purposes, particularly in the foreign policy area, it would be well to have conversations taped.

Q. All right. So your primary reason was for historical purposes and another consideration was the possibility of use in your writing your memoirs. Were there any other considerations? A. No.

Q. Just those two? A. None that I can recall.

Q. Thank you.

Do you know whether Henry Kissinger, when he was your National Security Advisor, had his telephone conversations taken down in shorthand by a secretary?

[74] A. I have no knowledge of that.

Q. You have no knowledge of that. You were never advised at any time that that might b e case? A. No, I didn't ask him. The secretary didn't tell me. If she had I would have told him to discharge her.

Q. You would have told him to discharge her? A. Yes.

Q. For telling you? A. Yes. She was working for him.

Q. I wasn't asking about whether the secretary told you or not, I was merely asking you whether you had any knowledge of that and your answer is "No"? A. All right.

Q. Are you aware that in the John Ehrlichman files, presently included in the presidential materials that are involved in this lawsuit, are copies of the CIA psychiatric profile of Daniel Ellsberg? A. No, I am not personally aware of that. I have been informed that that could be the case.

Q. Do you claim those documents as part of your presidential materials involved in this lawsuit? A. Yes. I think they would be part of the presidential materials; yes. Because whatever was done in this particular area was done in its official and not in an unofficial capacity.

Q. Which of the interests that we earlier identified would be protected by your having the exclusive control over those materials. A. The Ellsberg case?

[75] Q. That is right. Mr. Ellsberg's psychiatric profile is what I had reference to. A. Well, I would suggest first that that material, it seems to me, would come under the provision, the guidelines that I intend to lay down in my letter of intent in regard to what I consider to be private or embarrassing material. And I am speaking in terms of its disclosure, and to the extent that it involved Mr. Ellsberg's activities and their removing top secret documents from the various places he was employed within the government. That would fall within the strictures of the National Security test, except, of course, to the extent that the Supreme Court and Court of Appeals' opinion and the Pentagon Papers case makes that no longer a National Security item. I have not seen his profile, incidentally.

Q. Are you familiar at all with the General Services Administration regulations under the statute that is in issue in this case? A. Yes, I am familiar regulations were issued. I have not studied them carefully; no. I have not done so because I feel that we should first try to prevail in the suit and if we do not prevail I, of course, will study them very carefully.

Q. Are you aware that the regulations provide expressly for your access to the materials, the statute and the regulations so provide? A. Access under certain circumstances, as I understand. Certain conditions and access also by others.

Q. Would your interests be satisfied, Mr. Nixon, if either a complete copy of all of the Presidential materials were [76] made and transmitted to you for your use here at your home or if the originals were transmitted to you and a complete copy remained to be administered as provided in the statute? A. No, that misses the point of the

whole case. Because the point of this case is not just access for me for purposes of writing my memoirs, the point of this case is much more fundamental and profound. It goes to the issue of – a number of issues, but particularly the separation of powers issue. The principle of confidentiality, which I have addressed directly earlier and access to me, when coupled with access to government bureaucrats on a wide-scale basis, individuals who even with the best of intentions would not be able to make the fine judgments which, and by fine I mean the delicate judgments with regard to what is private and what is personal and what is political and what is embarrassing, what is National Security, et cetera. In other words, I beleive that the Presidential Libraries Act which, as I say, was passed in 1955 during the Eisenhower Administration, very appropriately considered a precedent that was not in law but just understood since the presidency came into being two hundred years ago, the Presidential Libraries Act provides that a former President first has the discretion and the sole discretion to make decisions with regard to the disposition of materials that were accumulated during his presidency.

MR. MORTENSON: I want the record to reflect that in counsel's position, counsel for the plaintiff's opinion, the question was replete with requests for legal conclusions by the witness. I think the pleadings in this case are clear, to [77] the extent that plaintiff does not believe that this statute adequately protects his rights; his rights, for example, under the First Amendment. I believe it is a legal conclusion to be decided by the Court, whether the provisions of the statute do adequately protect that interest.

Plaintiff is on record with filing the Complaint that the statute does not in any way, in his opinion, protect his interests as set forth in the Complaint.

MR. DOBROVIR: Thank you. It is time for our noon recess. We will convene at one o'clock.

(The time is 12 m. At this time the noon recess is taken.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON, Individually
and as the former President of the
United States

Plaintiff,

vs.

Administrator of General
Services, et al.,

Defendants.

No. 74-1852
Deposition of
RICHARD M. NIXON
VOLUME II

Deposition of Richard M. Nixon, plaintiff herein, called by Defendants in Intervention pursuant to Notice of Taking Deposition, on Friday, July 25, 1975, at San Clemente, California, before Joseph F. Weitzen, a notary public.

APPEARANCES

For the Plaintiff: Miller, Cassidy, Larroca and Lewin
by: Herbert J. Miller, Jr.
R. Stan Mortenson

For Intervening Defendants: William Dobrovir
Andrew S. Krulwich
Mark J. Spooner
Leonard B. Simon

For Defendant United States of America and Administrator of General Services:	United States Department of Justice IrwinGoldbloom David J. Anderson
For Special Prosecutor, Intervenor:	Watergate Special Prosecution Force Kenneth S. Geller, Assistant Special Prosecutor
Also in Attendance:	Andra Oakes

[79] *SAN CLEMENTE, CALIFORNIA, FRIDAY, JULY 25, 1975, 1:00 p.m.*

THE NOTARY: Mr. Nixon, this is a continuation of your deposition that was commenced this morning, and you have been previously duly sworn, and you are still under oath.

MR. NIXON: I understand.

RICHARD M. NIXON,
plaintiff herein, and having been previously first duly sworn, testifies further as follows:

FURTHER EXAMINATION BY MR. DOBROVIR:

Q. Mr. Nixon, when you were in the Office of the President of the United States, did you have an aide by the name of Gordon Strachan, S-t-r-a-c-h-a-n? A. He was an assistant to Mr. Haldeman and would be one of my assistants.

Q. He was one of your assistants? A. Yes.

Q. And were you aware that Mr. Strachan was preparing political matters memorandums for Mr. Haldeman? A. Oh, he did prepare political memoranda; yes.

Q. And you were aware of that at the time that he was preparing them? A. Yes, I was aware that he was working on political matters.

Q. All right. Was that part of his official duties as a member of the White House Staff?

[80] MR. MORTENSON: Counsel, are you using the term "official" in the context as it was defined earlier in this deposition, as it pertains to constitutional or statutory obligations or are you using it in a different context?

MR. DOBROVIR: I will strike the word official from the question.

BY MR. DOBROVIR:

Q. Was that part of his duty as a member of the White House Staff? A. During the election campaign members of the White House Staff, when it does not conflict with their primary responsibility on official matters, have been traditional and were in my administration assisting in campaign activities.

Q. So that do you therefore claim the political matters memoranda that Mr. Strachan prepared, as part of your presidential materials? A. Yes.

Q. I am going to show you, Mr. Nixon, a pamphlet, it is the Statement of Information, Appendix IV, Committee on the Judiciary, House of Representatives, 93rd Congress, Second Session, pursuant to House Resolution 803, Political Matters Memoranda, September 18, 1972. And there are included in here some nineteen separate documents. I would like to ask you if you would look at these documents, please, and tell me which ones you personally had seen earlier. A. I can't recall.

MR. MORTENSON: What pages, Counsel?

[81] MR. DOBROVIR: I am asking the witness to look

at everything and tell me if he can recall which of those he has seen earlier.

THE WITNESS: I can't recall.

MR. DOBROVIR: All right.

THE WITNESS: In a quick perusal of the documents, and I haven't – I mean it takes a little time to read it all, it does not show my initials on them. Normally when I looked at a document when it came to my attention either it had my initials or a check mark. These were documents that Mr. Strachan and – I see Mr. Haldeman's initials and his notes throughout.

BY MR. DOBROVIR:

Q. Now, in seeking exclusive control over disclosure of those documents, which of the interests that we earlier discussed are you seeking to protect?

MR. MORTENSON: Counsel, you have given the witness here a book of, as you have described them, nineteen documents and if you propose that we spend three or four or five hours necessary to review in detail the nineteen documents covering, I don't even know how many papers, and to line by line, which is necessary to determine which interests are being protected, I don't think that it is reasonable to request that time be spent here. I think that the record reflects that plaintiff is claiming those as part of the presidential materials and that the pleadings in this case reflect the interests to be protected as challenged to the suit.

THE WITNESS: 151 pages.

[82] Mr. DOBROVIR: All right.

MR. MORTENSON: I think the record should also reflect, since those are matters of public knowledge at this point, that plaintiff does not seek to maintain the exclusive right to control disclosure thereof.

MR. DOBROVIR: I will show you, Mr. Nixon, a one-page document called Memorandum for H. R. Haldeman

from Gordon Strachan on White House stationery. And I would like the reporter to mark this as Intervenor Defendants' Exhibit A.

THE NOTARY: The one-page document handed to me by counsel, consisting of a memorandum for H. R. Haldeman from Gordon Strachan, dated May 11, 1971, subject Timmons' Investigation of San Diego as 1972 Convention Site, will be marked Defendants' in Intervention Exhibit A, to the deposition, for identification.

BY MR. DOBROVIR:

Q. My first question is: Have you ever seen that particular document before? A. I can't recall having seen the document. I can recall discussion of the substance of the document.

Q. All right. Now, do you claim that document to be, or the original of that document to be part of your presidential materials? A. Yes, I do.

Q. What is the basis for that claim?

MR. MORTENSON: I object on the legal conclusion basis. The claims are set forth in the pleadings in this case.

[83] MR. DOBRIVIR: Is the basis for your claim that that is a matter of personal privacy?

MR. MORTENSON: I object to the question on the ground just stated.

MR. DOBROVIR: The witness has stated in his Affidavit and earlier in the course of this deposition has defined where it is personal and private. I don't think that those are legal conclusions. If, however, you instruct the witness –

MR. MORTENSON: You have not asked him whether he considers this a political document. You have asked whether he claims this and what interests it is to protect.

MR. DOBROVIR: I just asked him if that is, that document is a personal or private document.

MR. MORTENSON: I didn't hear that question. But that is a question I think he can respond to.

THE WITNESS: It is not personal nor private.

BY MR. DOBROVIR:

Q. That is political? A. Yes.

Q. Does that document have anything to do with the performance of your official duties as President? A. As what?

Q. As President? A. No.

MR. DOBROVIR: Now, this will be Defendants' Exhibit next in order.

THE WITNESS: If I might interject here, for purposes of [84] clarification of perhaps Counsel's line of questioning, that as we pointed out throughout this suit and pleadings and the Affidavit and like the President of the United States traditionally serves in many capacities, his primary responsibility, of course, is what has been termed official. He is Commander in Chief of the Armed Services and he has constitutional duties. Another hat the President wears is that of being the leader of his political party and, of course, connected therewith is the President's own personal political activities that he may be engaged in. For example, when he is running for reelection. Then in addition to that a President also is a citizen with personal contacts and private contacts. He is also a family man and if he has children, a father as well as a husband.

This is in the category of what we would call political information and I claim that that is part of it. I claim it is part of the subject matter of this suit.

THE NOTARY: The document handed to me by counsel, consisting of 124 pages listing names and contributions, will be marked Defendant Intervenor's Exhibit B, to the deposition, for identification.

BY MR. DOBROVIR:

Q. Exhibit B is a list of names and numbers which is described in another lawsuit by a witness as a list of campaign contributors that was maintained by Rose Mary Woods.

The first question is: Have you ever seen this document?

A. I do not recall having seen the document. It is [85] possible that I, however, could have seen the list of names because it was Miss Woods' function, among many other functions, to, after the campaign, because I had no contact when I could possibly avoid it with contributors, after the campaign election it was her function to set up various events where I could express my appreication. In that connection I might have seen this document. My best recollection, however, is what I saw was a list of names which we had for dinners, receptions, et cetera, et cetera, which covered most of the major political contributors and some who didn't contribute very much.

Q. Did you instruct her to maintain that list?

MR. MORTENSON: Objection. That calls for the substance of discussions between plaintiff and members of his staff, which we claim as privileged in the suit.

MR. DOBROVIR: I am not asking, Mr. Mortenson, if there was a tape of such instructions.

MR. MORTENSON: I know you did not ask that.

I will object to that question or any other question that calls for the substance of plaintiff's conversation with members of his staff.

BY MR. DOBROVIR:

Q. Was that document prepared by her in the course of her duties as your secretary or maintained by her if it wasn't prepared by her in the course of her duties as secretary? A. Yes. She, like other members of the staff did, whatever was within her ability to work on the cam-

paign, where that did not interfere with her primary responsibility to do work [86] involving official responsibilities with my official responsibilities as President.

MR. DOBROVIR: Would you mark this, please.

THE NOTARY: The six-page document handed to me by counsel, consisting of a memorandum dated April 23, 1969, from Richard G. Kleindienst, Deputy Attorney General, to John Ehrlichman, Counsel to the President, Re: ITT-Canteen Merger, will be marked Defendants in Intervention Exhibit C, to the deposition, for identification.

BY MR. DOBROVIR:

Q. Now, Mr. Nixon, I am showing you a memorandum from Richard Kleindienst and Richard W. McLaren to John Ehrlichman titled ITT-Canteen Merger. And my first question is: Have you ever seen that document before? A. I have no recollection of ever seeing it.

Q. Now, is that document claimed by you as part of the presidential materials involved in this lawsuit? A. Well, to the extent in view of this line of questioning, that memoranda are prepared and sent to members of the White House Staff from the Executive Agencies, or a member of the White House Staff to a member of the White House Staff, to the extent that those have traditionally been considered to be the presidential material, I claim that this is presidential material. And it has been the case in the past, as I understand.

MR. DOBROVIR: I am showing you a memorandum dated July 20, 1971, for Bud Krogh from John Dean. I will ask the reporter to mark it.

[87]THE NOTARY: The ten-page document handed to me by counsel, consisting of a memorandum for Bud Krogh from John Dean dated July 20, 1971, with attachments, will be marked Defendants in Intervention Exhibit D to the deposition, for identification.

MR. MORTENSON: Counsel, I am going to ask what the source of these documents are? Are they documents that came from the White House files? Were they produced from other sources? Because the Complaint here encompasses the materials that have been impounded under Court Order, as part of the materials of the Nixon Administration.

To the extent that these are not documents that are included among those materials which did not originate from those sources, it is impossible for us to make a determination of whether they are encompassed by this litigation.

MR. DOBROVIR: All of the documents which I have are documents which I understand are copies of documents that are in the presidential materials that were subpoenaed either by the Special Prosecutor's Office and turned over to the Special Prosecutor's Office by the White House during the incumbency of Mr. Nixon or were subpoenaed by the House Judiciary Committee and were turned over to the House Judiciary Committee during the incumbency of Mr. Nixon.

MR. MORTENSON: Is there anything in the record which indicates that the original, or at least the carbon copy from which you have obtained a carbon copy of the memorandum marked, I believe it is, Defendants' in Intervention C, came from the White House files as opposed to the files of the Deputy Attorney [88] General?

If there is no basis other than your assumption, it is impossible for the plaintiff to speak with any assurance as to whether or not that is a document to which we claim ownership under this litigation.

MR. DOBROVIR: I cannot say with assurance, of course, where reposes the original from which that copy was made.

MR. MORTENSON: Well, if that is the case, I have no way of knowing whether or not John Ehrlichman received this document and placed it in his files, or received this document and returned it to the Deputy Attorney General. I have no basis for knowing whether this document is included in the presidential materials and therefore it is impossible for me to permit the witness here to speculate as to whether or not that document is a document which is claimed under this litigation.

BY MR. DOBROVIR:

Q. Do you have before you the Krogh-Dean memorandum? A. Yes.

Q. That is Exhibit D.

Have you ever seen that document before?

A. No, I can't recall having seen it.

Q. Do you claim the original of that document as part of your presidential materials involved in the lawsuit?

MR. MORTENSON: Again, Counsel, I have to interrupt to say that that is a document, whether the original reposes in the presidential materials that are now impounded as part of this lawsuit. That will influence the answer.

[89] MR. DOBROVIR: I believe it is.

MR. MORTENSON: Well, if you have a basis for that I will accept the basis for your belief. And with that we can answer your question. If you are assuming that it is, all we can do is assume that if it were there we might take a position one way or the other.

MR. DOBROVIR: Perhaps I can ask the question hypothetically.

BY MR. DOBROVIR:

Q. If the original of that document still is in the White House, would you claim it as part of your presidential materials? A. Yes.

Q. Yes? A. This is distinguished from the document Mr. Mortenson was referring to earlier, communication within the White House itself.

Q. Thank you.

Is that a personal or private document?

A. This document?

Q. Yes.

MR. MILLER: To whom, Counsel?

MR. DOBROVIR: To Mr. Nixon as defined by him earlier today.

MR. MORTENSON: Are you talking about the first page, Counsel?

MR. DOBROVIR: The entire document.

[90] THE WITNESS: It would depend after a very quick perusal, of a very long document, for context.

BY MR. DOBROVIR:

Q. Why don't you focus on the very first page and have the testimony reflect only as to the first page.

(At this time plaintiff and plaintiff's counsel confer.)

THE WITNESS: I would consider this primarily a political document.

BY MR. DOBROVIR:

Q. That is primarily a political document.

Is there any other aspect to it that relates as to why you would claim this as part of the presidential materials?

A. Well, it was obviously not written, the memorandum, for the private purposes of Mr. Dean or Mr. Krogh, it related to general policy of the Administration. I would consider it to be political, a political document and within the claim that we are making in this suit.

Q. Does it relate at all to their official functions as members of the President's staff? A. Without knowing the background I couldn't say.

MR. DOBROVIR: Would you mark this, please.

THE NOTARY: The four-page document handed to me by counsel, consisting of a memorandum from George Bell dated June 24, 1971, for John Dean, Jerry Warren and Van Shumway entitled Subject: Opponents List, will be marked Defendants' in Intervention Exhibit E, to the deposition, for identification.

[91] BY MR. DOBROVIR:

Q. Have you ever seen that document before? A. I have no recollection of having seen it; no.

Q. Were you aware, at the time of the preparation of that document, that a list of twenty opponents was being prepared by Mr. Bell? A. By Mr. Bell?

Q. Or by anyone in your staff? A. I can answer the question only in a broader sense, that in campaigns there is always the custom to determine those who are supporters in the various areas that might affect the outcome of a campaign, in the business world, political world and needless to say, we, of course, not only prepared – there were prepared, certainly for the campaign organization, not only a document of this sort but also a document indicating those who were not supporters. We have both.

Q. Excuse me? A. We have both.

Q. Yes. Was that document prepared by Mr. Bell in the course of the performance of his duties as a member of your staff? A. As I have pointed out before, a staff member of any public elected official who is running for re-election can and almost invariably does, to the extent that it does not interfere with his primary responsibility in official government business, work during a campaign for the success of whomever is his superior.

Q. Now, is that the kind of document disclosure of [92] which would have a chilling effect on advice to be given to you by members of your staff in the future or by members of a President's staff to a President in the future? A. It very well might; yes.

Q. In what way? Can you expand on that? A. Because the fact that the individuals who are named in the document were considered by a staff member to be opponents of the Administration, may or may not have been individuals – as a matter of fact, on the other side of the coin, individuals who were listed as supporters might have been concerned about being so listed. And in view of the fact that it would inhibit their opportunity to change their minds the next time around, which many people do. And I would say therefore that this type of document is one that could well inhibit their freedom of action. Well, if you want to put it, freedom of expression and association and so forth in the future. I am referring to people that are named.

Q. Excuse me? A. I am referring to people that are named, I said.

MR. DOBROVIR: We will mark this as Exhibit F.

THE NOTARY: The three-page document handed to me by counsel, consisting of a transcript of September 15, 1972, meeting will be marked Defendants' in Intervention Exhibit F, to the deposition, for identification.

BY MR. DOBROVIR:

Q. This is an exhibit which is a copy of Pages 614 through 616 of Book 2 of the Statement of Information of the [93] House Judiciary Committee pursuant to House Resolution 803. This consists of a portion of the transcript of the September 15th, 1972, meeting, a portion of the transcript of a tape recording of such a meeting.

I would like you to focus in particular on the portion at the bottom of Page 614, which is ascribed to President and from there on down through to the bottom of Page 616, the words "That's right" are ascribed to Dean.

I would like to ask you first if you recall that conversation?

A. Oh, I recall having a conversation; yes.

MR. MORTENSON: Which portion did you direct him to look at?

MR. DOBROVIR: Starting at the bottom of the first page where it says "President" and then about eight or nine lines and then the rest of it to the bottom of the last page where it says "Dean: That's right."

MR. MORTENSON: Counsel, is this the entire transcript of the entire conversation?

MR. DOBROVIR: Of course not, counsel.

MR. MORTENSON: Do you have the entire transcript?

MR. DOBROVIR: I do not.

MR. MORTENSON: What is your question?

MR. DOBROVIR: First of all, does the witness remember the conversation that I have designated?

MR. MORTENSON: The portion of the conversation that you have designated?

MR. DOBROVIR: That is right.

[94] THE WITNESS: I can recall it in general, not specifically.

BY MR. DOBROVIR:

Q. Now, is that conversation claimed by you, is the tape recording of that conversation claimed by you as part of the presidential material involved in the lawsuit?

MR. MORTENSON: Counsel, we have stipulated that every one of the White House tape recordings and everything contained thereon is a part of the presidential materials claimed under the statute.

MR. DOBROVIR: Fine.

BY MR. DOBROVIR:

Q. Is that conversation, do you consider that conversation personal and private?

MR. MORTENSON: Unless Counsel can produce the entire transcript so the witness can evaluate that portion

of the conversation, Counsel, in light of the entire conversation, I don't think the witness can respond.

MR. DOBROVIR: Very well.

BY MR. DOBROVIR:

Q. I have here a pamphlet entitled Transcript of the Eight Recorded Presidential Conversations September 15. This is a printed version rather than a typewritten version, which is the document I have handed you, and it covers from Pages 1 through 19. A. Yes.

[95] MR. DOBROVIR: Would you like me to show that to the witness, Mr. Mortenson?

MR. MILLER: The entire conversation?

MR. DOBROVIR: Yes.

MR. MORTENSON: If you have it.

MR. DOBROVIR: It is the transcript of that entire tape as published by the House of Representatives.

MR. MORTENSON: Counsel, do you know who prepared the transcript?

MR. DOBROVIR: I believe that the record shows that that transcript was prepared by the staff of the House of Representatives.

MR. MORTENSON: Then we can't vouch for the accuracy and I am not prepared to have the witness speculate as to whether something is personal, private or official.

The material that I see here on the first page, Page 614, is marked "unintelligible," and that conversation, that portion which was unintelligible to whomever transcribed this for the House Judiciary Committee, may very well be a private reference or political reference or official reference. And for this witness to speculate as to what this conversation is or what this portion of the conversation is without having the recording to review it is impossible and I will direct him not to answer.

MR. DOBROVIR: You are challenging the authen-

ticity of the House of Representatives transcript?

MR. MORTENSON: What I am saying, we have no basis to establish the authenticity.

[96] Mr. DOBROVIR: Are you familiar with the new Federal Rules of Evidence, Mr. Mortenson?

MR. MORTENSON: Maybe you can read them to me.

MR. DOBROVIR: I don't have them with me but they do provide that official documents of the United States are evidence in their published printed form.

MR. MORTENSON: I am not sure that is an official document of the United States. It is a Congressional document. If you want –

MR. DOBROVIR: You are challenging the authenticity of that pamphlet as an official publication of the House Judiciary Committee?

MR. MORTENSON: I am saying it very well may be a document of the House Judiciary Committee, but if you are asking this witness to speculate or to draw a conclusion as to whether that conversation is personal, private, or official, the only way he is prepared to do that is to review the recording, to hear the conversation and make the determination and not to base that speculation on a document prepared by the House Judiciary Committee.

I have no basis to know whether it is an official document or not, to know that portion marked "unintelligible" is in fact unintelligible. It may have been unintelligible to the person who prepared the transcript but it may not be unintelligible to the witness, which would directly influence whether he could respond to your question.

THE WITNESS: A very good example of that occurred when during the course of the tortuous proceedings the story appeared [97] in major newspapers to the effect that on a conversation with Mr. Dean, a taped conversation on February 28th, that he had said, had told me that, according to the transcript, Judge Sirica was a very,

in effect, tough judge and that I responded by saying "He is a gol' darn Wap." That was not only printed in the New York Times, it was on television and on radio. It was never adequately retracted.

What the tape actually was when I listened to it, because I recall, I knew that I had never used that term, I knew I didn't have that opinion. What the tape actually said when Dean said "He is a tough judge," was that "That is the kind I want."

Now, I am not indicating that the individual, whether Special Prosecutor's Office, because here, whether the leak came from there or the House Judiciary Committee, I don't know, I am not indicating that it was done deliberately, but I am indicating that these tapes, having listened to a few and particularly those where conversations run together, these tapes in many cases are heard in different ways and the transcripts therefore may not reflect accurately what was said.

BY MR. DOBROVIR:

Q. Now, let's see if perhaps we can resolve this.

In connection with this conversation, Mr. Nixon, do you remember the reference to Edward Bennet Williams, which the House of Representatives Judiciary Committee Transcript indicates you made?

A. Yes. Yes, I remember a reference to him.

[98] Q. You do remember that? A. I don't –

Q. You do not remember? I am sorry. A. I said I remember a reference to Edward Bennett Williams.

Q. Thank you, sir.

Now, Mr. Nixon, I am showing you once again the blue volume, the "Submission of Recorded Presidential Conversations to the Committee on the Judiciary," which was issued in your name on April 30, 1974. And I am showing you the pages that correspond to those pages and you will notice that the reference to Edward Bennett Williams does not appear there.

A. Yes, I note that.

Q. All right. Now, on April 29, when you made your speech to the nation, did you say: "For many days now I have spent many hours of my own time personally reviewing these materials and personally deciding questions of relevancy"? A. Yes.

Q. Had you personally reviewed the transcript of the September 15 tape for the purposes of the submission of April 30?

MR. MORTENSON: Objection. As irrelevant and I will direct the witness not to answer unless you can explain to me the relevancy.

MR. DOBROVIR: Well, there are two matters of relevance, Mr. Mortenson. One is you have been challenging the authenticity of the House of Representatives transcript.

MR. MORTENSON: I did not challenge the authenticity. I [99] said portions of that, are indicated as unintelligible, and I am saying that I don't know whether that is unintelligible or not, the portions that are written may very well be intelligible.

MR. DOBROVIR: Can we stipulate, Mr. Mortenson, I am not asking the witness about that portion?

MR. MORTENSON: What you have asked is whether this conversation was political, private or official. And I told you unless we have the recording he is not in a position to characterize a conversation or a portion of the conversation. A lot of factors go into characterizing a particular conversation, some of which pertain to conversations that took place before that conversation or after that conversation. We don't have those, we don't have the tape recordings.

BY MR. DOBROVIR:

Q. Would any interest in confidentiality be damaged by the disclosure of your reference to Edward Bennett

Williams in that conversation?

MR. MORTENSON: I object to that, Counsel. We have contended in this lawsuit that the statute provides for the total review of these recordings by a group of government personnel and we have contended that that is a breach which would have a damaging effect upon the Office of the President and upon plaintiff in the suit.

To my mind it is irrelevant and totally immaterial whether a particular revelation as to Edward Bennett Williams would have a damaging impact. This litigation is about a statute [100] which requires the total disclosure of such materials. If the statute provided for the disclosure of all reference to Edward Bennett Williams, that alone we would be challenging, deciding whether to challenge the statute on that basis.

MR. DOBROVIR: Are you instructing your witness not to answer?

MR. MORTENSON: Yes.

MR. DOBROVIR: Are you accepting that instruction, Mr. Nixon?

THE WITNESS: Yes.

BY MR. DOBROVIR:

Q. Very well.

Mr. Nixon, did you personally approve the deletion of the reference to Edward Bennett Williams from the text of the transcript as published in the blue volume I have before you?

MR. MORTENSON: I object on the grounds of relevancy and instruct the witness not to answer.

MR. DOBROVIR: Let me explain for the record, what additional relevance it has then.

MR. MORTENSON: All right.

MR. DOBROVIR: You have claimed in your Complaint that this statute is in effect a Bill of Attainder; that Mr. Nixon is in violation of the Constitution and being

treated differently from all other Presidents. It is our defense to that claim that Congress had ample justification for its action in seeking to place and retain control of the materials at issue here within the [101] Federal governmental establishment. One of those grounds was that when the plaintiff was in control of these materials he issued them in a deleted and changed form. I am now pursuing the line of examination intended to obtain evidence in respect to that issue raised in your Complaint.

MR. MORTENSON: I still disagree with the relevance and instruct the witness not to answer and state that if that is the justification of the statute you have a real problem, because Congress did not limit itself to material relative to Watergate, or those which were turned over, and whether they were turned over in complete form or not. And if you recall, Counsel, at the time these materials were turned over to the House, in the form of the Blue Book, the Committee, the ranking committee members were invited to come and listen to the recordings in their entirety. I don't believe that they deemed it necessary from their vantage point to do so.

BY MR. DOBROVIR:

Q. Mr. Nixon, on May 22, 1974, you wrote to Mr. Rodino, the Chairman of the House Judiciary Committee, and I quote from your letter: "The committee has the full story of Watergate insofar as it relates to presidential knowledge and presidential actions. Production of these additional conversations would merely prolong the discovery without yielding significant additional evidence."

On June 9, once again you wrote to Chairman Rodino and said, "The voluminous body of materials that the committee already has and which I have voluntarily provided, [102] apparently in response to the committee requests and apparently in an effort to round out the

record, does give the full story of Watergate insofar as it relates to presidential knowledge and presidential actions."

On August 5, 1974, in a public statement you said: "On April 29, in announcing my decision to make public the original set of White House transcripts, I stated that 'As far as what the President personally knew and did with regard to Watergate and the cover-up is concerned, these materials together with those already made available will tell it all.' Shortly after that, in May, I made a preliminary review of some of the sixty-four taped conversations subpoenaed by the Special Prosecutor. Among the conversations I listened to at that time were two of June 23."

My question is: Had you listened to the tape of June 23 prior to writing the letter of May 22, 1974, to Chairman Rodino?

MR. MORTENSON: Objection on the ground of relevance and I will instruct the witness not to answer.

BY MR. DOBROVIR:

Q. Had you listened to the tape of June 23 prior to the letter of June 9 to Chairman Rodino?

MR. MORTENSON: The same objection. I will instruct the witness not to answer.

MR. DOBROVIR: Mr. Mortenson, I have just received a suggestion from one of my co-counsel and I will adopt the suggestion.

[103] My question to you is: Are you claiming that it is irrelevant for the purposes of this lawsuit whether or not Mr. Nixon, in any of those published statements, misrepresented the record deliberately?

MR. MORTENSON: Are you asking the question of whether he misrepresented the record deliberately?

MR. DOBROVIR: I am asking you whether it is your contention that is what is irrelevant?

MR. MORTENSON: Yes.

MR. DOBROVIR: Thank you. Bear with me for a moment and I will find Mr. Nixon's affidavit again.

BY MR. DOBROVIR:

Q. On Page 5, Paragraph 8 of your Affidavit, you state, and I quote–

MR. MORTENSON: If I may, Counsel. Let me expand upon my answer.

MR. DOBROVIR: Certainly.

MR. MORTENSON: But I do believe that it is totally irrelevant to this suit and the issues raised by the statute.

The plaintiff's actions in regard to the preparation of the tape recordings that were reported, the transcript which was reported to the committee, and it is that entire line of questioning that I have instructed the witness not to respond to.

I have informed you, as I am sure you are probably aware, that the full text of those recordings, the actual recordings themselves, were offered to members of the committee to respond to and I think that in itself is a complete [104] demonstration that there was no effort to misrepresent the record, deliberately or otherwise, when the committee to whom the material was submitted had the source available. Beyond that and even in that regard I consider the whole line of questioning irrelevant to this lawsuit.

MR. DOBROVIR: Since we are putting material on the record you should note that my last question related to the June 23 tape which was not offered to the Judiciary Committee on April 30 in connection with the submission. Moreover, that my questions relate to public statements made to the people of the United States and, of course, Section 104-A1 of the statute relates to the desire of the Congress and the President that the full story of Watergate be made public to the people as soon as reasonably possible.

I should add that I am not going to burden the record with it.

MR. DOBROVIR: I was also planning to ask similar questions with respect to the President's news conference of October 5, 1972, as compared with the June 23, 1972, conversation – excuse me, the March 6th, 1974 news conference as compared with a March 22, 1972, conversation, the particular portion of which was not disclosed in the April 30 submission.

I had a question with respect to the news conference of August 22, 1973, and I had a question with respect to the news conference of September 5, 1973.

As I said, I won't ask the questions merely for purpose of having you interpose your objection. I will assume you will interpose for the same.

[105] MR. MORTENSON: I will object and particularly to the extent that you request plaintiff to respond to what action he had taken, whether he had reviewed recordings and in the process of reviewing recordings and in the process of reviewing recordings I imagine there must have been discussions and so forth. The actions of the President are claimed in this suit to be privileged, at least in the context of a Congressional act trying to seize for public disclosure the presidential materials. And to the extent that you were requesting this witness to put upon the record in this case the substance of his actions or discussions or anything else we object on the ground that this is what the whole lawsuit is about, protecting that privilege of confidentiality as well as other privileges involved in the claim.

MR. DOBROVIR: Are you contending then that the matter of the date upon which the plaintiff reviewed a particular tape, which he has disclosed he reviewed in May, are you contending that any more specific information other than that is privileged?

MR. MORTENSON: I am saying in the context of this lawsuit we refuse to answer on both grounds, irrelevancy

and privilege.

MR. DOBROVIR: You are instructing the witness not to answer?

MR. MORTENSON: Yes.

MR. DOBROVIR: And the witness is accepting that instruction?

THE WITNESS: Yes.

MR. DOBROVIR: Thank you.

[106] BY MR. DOBROVIR:

Q. Mr. Nixon, on Page 5 of your Affidavit, Paragraph 8, you state "I assumed that such opinions were given in confidence to assist me as President and that they would not be publicly disclosed. Just as important, those who gave me their opinions must have so assumed."

On Page 14, Paragraph 20, you say with respect to Foreign Affairs and Domestic Policy, "If the President and his advisors had thought that their discussions were to be published and publicized, they would undoubtedly have been far more cautious and far less frank and free-wheeling."

On Page 16 you say at the time the tape recordings were made, and I am not quoting there but now I am beginning to quote "And my other presidential materials were generated, neither I nor the members of my staff expected that any of my presidential materials, and certainly not the tape recordings of my confidential conversations, would ever be disclosed to the public, at least without my express authorization."

However, you also say in Paragraph 22, that you knew that many Presidents had used their presidential materials to prepare their memoirs.

You also say, in Paragraph 23, that in part the consideration of preparation of your memoirs, and I think you testified to this earlier as well, was one of the bases, one of the reasons for the installation of the tape recording

capacity. You also say that you intended to place the tapes in a presidential library.

Now, hearing all those various statements and [107] bearing all those statements in mind, is it your contention in this case that disclosure would not have the chilling effect that you refer to if that disclosure is controlled by you?

A. That is correct. That has also been the practice of previous presidents.

For example, as Counsel is perhaps aware, not only do we have the restriction of fifty years, which President Johnson has placed on his tape recordings, many types of some of the material which Truman had and has never been disclosed and may never be disclosed, the same can be said with regard to President Eisenhower. And what I am doing here is adopting the same practice.

I will, however, as I have indicated, follow as generous a rule as possible with regard to the disclosure. But on the other hand, only the President, with regard to presidential materials, generally I am referring now when they are a combination of official, political, private and personal, only the President can make that judgment with all of the considerations in mind. That I think is the essence of basically this suit as I have pointed out earlier. It has many considerations, but when in trying to determine such matters as whether something should be disclosed or not, the time that it can be disclosed, only one who participated, for example, in a conversation or one for whom the material was prepared, knows the total background and cannot make that decision. It can be adequately made and, as a matter of fact, with no bad intentions whatever or bad faith, it would not be adequately made by government men, bureaucrats.

[108] That is why, for example, I know that President Johnson, and I am sure President Johnson has not allowed review of his tapes except by himself and one

intimate member of his staff. That is why, as I understand, President Kennedy, or as far as the tapes in the Kennedy Library, it's my understanding they are not being reviewed by scholars outside of the immediate Kennedy entourage.

That is why President Eisenhower, I know, insisted on reviewing his materials. He did not have tapes but he always had a notetaker in his room or virtually always. And if only one individual was present, he would ask that individual to make a memoir for his presidential files. President Eisenhower felt it his prerogative and responsibility. And upon his death he passed that on to his son to make the decision as to what should be disclosed and when.

All that we are seeking in this suit is that same right, because we believe that the right is not simply a pecuniary one, because memoirs might be more valuable because of the fact that the President had access or at least the first access to materials, but in my view it goes much further than that. It goes to the Office of the Presidency, not just the man who sits there, but for past Presidents and I believe future Presidents as well. Some may disagree, some Presidents may disagree, but I know from my experience that the safeguard of confidentiality of privileged communications is indispensable to making the best decisions and if that safeguard is further eroded, it already has been eroded too much in my opinion, but if it is further eroded it will have a very detrimental effect [109] on the ability of future presidents to make the decisions that need to be made for the best interest of the country.

Q. In that connection I would like to read to you a passage from the Transcript of Eight Recorded Presidential Conversations Hearing before the Committee on the Judiciary, pursuant to House Resolution 803.

It appears on Page 183 of that volume, and also in a

separate volume entitled Comparison of White House and Judiciary Committee Transcripts of Eight Recorded Presidential Conversations. The House Judiciary Committee states with respect to the material from which I am about to quote, it states as follows: "The following portion at the end of the March 22, 1973, conversation (beginning on Page 180 of the House Judiciary Committee Transcripts) does not appear in the "Submission of recorded presidential conversations April 30, 1974, nor does it appear in the transcript prepared by the White House for the Special Prosecutor."

"In January of 1974 and to the Judiciary Committee in March 1974, and I am reading from Page 183 and it says – let me go back a little bit so it is in context.

President: "Dean? Discipline is very high. Mitchell, Parkinson, O'Brien.

President: Yes. Dean says it's great. Well, you know I feel for all the people. You know, I mean everybody that is involved. Hell, "all we're doing is their best to [unintelligible] and so forth." And then again unintelligible. "That is why I can't let you go down. John? It has already come–

[110] "Dean. Uh.

"President: Did you find out anything?

"Dean: I was – I went over to Ziegler's office. They have an office over there. But O'Brien'll be down here in a little while to see you. I am going over to Ziegler's office to finish this up.

"Mitchell: Are you coming back?

"Dean: Yes, I'll come back over here then.

"Mitchell: Okay.

"President: Yes. Well, when you come back, he can, uh, is that office open for John now?

"President: Then he can go over there as soon [unintelligible] This – but, uh – one thing I don't want to know – now, let me make this clear. I, I, I thought

it was very – a very cruel thing as it turned out – although at the time. [Unintelligible] What happened to Adams I don't want to happen with the Watergate matter. I think he made a mistake, but he shouldn't have been sacked, he shouldn't have been – and for that reason, I am perfectly willing and I don't give a" – I am just deleting an expletive "what happens. I want you to all stonewall it and complete them, complete the five amendments, save the plan. That is the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way."

A. Would counsel please indicate what "the other way" was.

Q. I am reading from the transcript. [111] A. Well, Counsel–

Q. I don't know. A. I would interpose here, Counsel, the fact that that is a rather famous conversation that appeared on the cover of Newsweek and the cover of Newsweek left off what Counsel has just read. I would prefer it "the other way." The other way that I preferred, as I had indicated, was that all should go before the Grand Jury and testify freely without claiming any privilege.

Q. I am reading the whole page, Mr. Nixon. A. I know, but you didn't read the other way, the other way referred to earlier in the paper. You don't even know what the other way was.

Q. No.

MR. MORTENSON: I think it is representative of the fact, Counsel, that when you start to take portions of the conversation it distorts the meaning.

THE WITNESS: You don't know what the other way is.

MR. DOBROVIR: No. Would you tell us.

MR. MORTENSON: He just told you, Counsel.

THE WITNESS: I just told you. It seems to me when asking, when you say "the other way" you would have looked back and found what it was I think. It was in reference to going before the Grand Jury. That had constantly been my position.

MR. MORTENSON: Can I ask you, Counsel,–

MR. DOBROVIR: I was going to ask a question about that, if I may.

MR. MORTENSON: Go ahead.

[112] BY MR. DOBROVIR:

Q. Mr. Nixon, did you approve the deletion of that passage from the submission of April 30, 1974 – January '74 and March 1974?

MR. MORTENSON: Objection on the ground he has already stated, and I would like for Counsel to state for the record where in his pleading the accuracy of plaintiff's, or as he stated it before, the deliberate misrepresentation of any record is raised in your pleadings. You said you raised this as a defense to–

MR. DOBROVIR: That is not what I stated, Mr. Mortenson. It is a defense and it will be argued as a defense.

MR. MORTENSON: Has it been raised in any of the pleadings?

MR. DOBROVIR: It is implied in our denial of the allegations made in your Complaint.

MR. MORTENSON: Point to where it is implied in that.

MR. DOBROVIR: In other words, your allegation that this is a Bill of Attainder.

MR. DOBROVIR: Pursuant to that, we have a right to produce evidence in support of our denial.

Let me ask my question, may I?

BY MR. DOBROVIR:

Q. Mr. Nixon, what interest would be damaged – well, let me ask it this way.

What interest was damaged by the disclosure of that conversation?

MR. MORTENSON: I object and will instruct the witness not [113] to answer this whole line of questioning.

MR. DOBROVIR: I will now turn it over to Mr. Krulwich.

MR. MORTENSON: Let us take a brief recess, please.

(A brief recess is taken at this time.)

MR. MORTENSON: Let me state for the record that as counsel for plaintiff we object to the procedure of the joint Intervenor Defendants splitting the questioning of this witness in the deposition, on the grounds that the Court has permitted a joint intervention by the parties. The normal procedure for taking the testimony of a witness is one attorney for one witness. But under the circumstances we are glad to consent to the parties going ahead and splitting it in this instance.

THE WITNESS: I am an American League fan. I don't mind.

MR. KRULWICH: Let me say for the record, we have conducted the deposition on joint effort and we have cooperated in the preparation. We will not be asking repetitious questions. We have divided up responsibility for questioning and we think it is appropriate.

EXAMINATION BY MR. KRULWICH:

Q. Mr. Nixon, my name is Andrew Krulwich and we are counsel for The Reporters Committee for Freedom of the Press and the American Historical Association and American Political Science Association. I am accompanied here by Mark J. Spooner and Leonard B. Simon.

Did you conduct governmental business at Key Biscayne and San Clemente when you were President?

A. Yes.

[114] Q. Did you maintain or keep any files relating to this governmental business in Key Biscayne or San

Clemente, while you were President? A. No.

Q. Were any tape recordings made in Key Biscayne or San Clemente, when you were President? A. No.

Q. When you left the White House on August 9, did you take with you any documents or tapes? A. What tapes are you referring to?

Q. The tapes that you referred to in your Affidavit and which is the subject of this litigation. A. Do you mean the so-called tapes from the Watergate tapes?

Q. Tapes made in the Executive Office Building? A. The ones made under the taping system?

Q. Yes. A. No.

Q. Did you take with you any documents? A. Any documents?

Q. Yes. A. What type of documents?

Q. Any documents that would be referred to and you would consider as part of the presidential materials, when you left the White House on August 9. A. None of that sort. Presidential material?

Q. Yes. A. No.

[115] Q. In connection with your preparation– A. Let me point out.

Q. Sure. A. I requested, of course, that as soon as I arrived there that the tapes and all of the presidential material be forwarded here. But as a result of a number of events that go on, in particular the temporary restraining order that was obtained and that is why I did not have them. If I had thought such an order would have been issued, I think I might have taken them.

Q. In preparation for your possible testimony in the Watergate Conspiracy trial, did you receive any of the presidential materials of your Administration in order to assist you in preparing that testimony?

MR. MORTENSON: Counsel, are you referring to copies of the presidential materials?

MR. KRULWICH: Either copies or materials, taking

them one at a time.

THE WITNESS: Excuse me. What testimony do you mean? The deposition that I gave?

BY MR. KRULWICH:

Q. No, I am referring to there was a time when there was a possibility that you might testify in the Watergate Conspiracy trial in Washington, D.C. A. Yes.

Q. Did you receive any of the presidential materials of your Administration in order to assist you in preparing for [116] possible testimony at that trial?

(At this time plaintiff and plaintiff's counsel confer.)

THE WITNESS: We are consulting with Counsel to find out, because at that time, as you remember, I was in the hospital.

MR. MILLER: You may testify you don't recall.

THE WITNESS: Actually I was in the hospital for approximately two months and I don't recall any material ever being sent to me. But my Counsel informs me they got some material and did not send it to me, because I was in the hospital.

MR. MILLER: I didn't inform you.

THE WITNESS: I said that is my recollection. I can't tell you whether we did or not. As far as I am concerned, I didn't see any, let's put it that way.

BY MR. KRULWICH:

Q. And if any was sent you you do not know about it? A. I do not know about it; no.

Q. Since August 9, have you received any presidential materials from your Administration, either originals or copies? A. Presidential material?

Q. Yes. A. All of that material is presidential, I said. As you know, all the presidential material is held in Washington.

Q. Mr. Nixon, I want to show you an article that appeared very recently in the Washington Post, possibly to refresh your recollection and just for your information and so you know what it is I am referring to. A. Who is the author?

[117] Q. I don't know. It doesn't say. It indicates that the Saturday Evening Post may be getting some of your presidential papers from your daughter, Mrs. Eisenhower. And my question is first: Is this accurate? A. Let me see what my daughter is up to.

MR. MORTENSON: Another example of inaccurate Washington Post reporting.

THE WITNESS: This article refers to letters that were received, incidentally, primarily during the period I was in the hospital.

My daughter Julie, as you know, has been a consultant and I think called an assistant editor of the Saturday Evening Post. When she was here, oh, three, four months ago she came over and worked with volunteers in opening some of these letters and she was particularly interested in the letters that came from children. You know, school children made up cards and all that sort of thing during my illness as well as others. And she said that she would like to do an article on this. And so under those circumstances she contacted our office and these, incidentally, were letters that had already been opened. They were letters that I could not respond to because no allowance, no adequate allowance was provided for responding to over two million letters I received since August 9th. And some of these letters were sent to the Post, to Indianapolis.

However, while they were in transit she concluded that she could not and did not want to go forward with the project. As a matter of fact, she has other plans for the future, not that she won't be a consultant to the Saturday [118] Evening Post. Consequently the letters are

now on their way back and I am donating them all to the presidential library to be set up.

Q. Time Magazine reporting on the same incident, and I am sorry I don't have a copy of the Time article with me, referred to these papers as "presidential papers." A. No.

Q. Is that accurate? A. I would say not – well, it is accurate only in the sense that if a Time editor believes that a former President's letters sent to him are presidential, then it is a presidential paper. I do not, however, consider it to be accurate in terms of presidential papers, in terms of this lawsuit, and I believe they are holding quite a few letters, a number that came in before I left.

MR. MORTENSON: I think the record should be clear that the testimony is that none of these letters referred to in plaintiff's testimony predate August 9, 1974.

THE WITNESS: Correct.

MR. MORTENSON: And I certainly hope no one claims they should be the owners of them.

BY MR. KRULWICH:

Q. I was trying to establish what papers they were. A. I understand. And the stories, because of lack of information, would lead you to that conclusion, so your line of questioning is fair and proper.

Q. I want to go back for one minute. I neglected to [119] follow up before, when I asked about the materials you took with you when you left the White House on August 9th.

You answered that, I believe, you did not take with you any White House tapes. Did you take any other tapes with you?

A. All that I was able to take with me and all that I did take with me were some of my personal notes and diaries that had not yet gone to the White House files. Those, of course, I took with me because they were avail-

able, they were in the office and I just took them from my office. But only things that were in my office or in my safe at the White House residence were taken.

Q. Are you referring there to Dictabelts? A. There were some.

Q. Are these the same Dictabelts that you are referring to in your Affidavit on Page 12? A. A portion of them. Most of the Dictabelts, unfortunately I must say in terms of my commitment to meet a deadline with regard to writing, are still in the White House under the Restraining Order. The only ones I was able to take with me and that I did take were ones that were in my office and, as I said, in the President's Office and also in my safe in the White House residence, where I kept notes, Dictabelts whenever they had recently been made.

See, it was my custom, I should point out, that with regard to Dictabelts, not to have them transcribed and they have not been transcribed yet so I don't even know what I have.

[120] Q. I see. A. And we have not been able to get an inventory from the White House as to which of the belts are there.

THE WITNESS: Is that right, Mr. Mortenson?

MR. MORTENSON: Yes.

BY MR. KRULWICH:

Q. You just mentioned your commitments for writing. Do you have a commitment at this time? A. Yes.

Q. And does that commitment involve a signed contract with a publishing agency? A. Yes.

Q. And does that signed contract provide for you to receive a sum of money in return for your memoirs? A. Yes. It is conditioned also on what I am able to produce, and I confidently expect that I will be able to produce memoirs in due time.

Q. All right. On Page 16 of your Affidavit, and again on Page 17 in Paragraph 21 and then again Paragraph 23, you referred to "Tape recordings of conversations in the Oval Office and my office in the Executive Office Building and elsewhere," et cetera. A. Yes.

Q. What did you mean by "elsewhere"? A. Well, there were tape recordings of my telephone conversations made from my office in Camp David, what is called Aspen Lodge. There were no tape recordings in San [121] Clemente and none in Florida or on the telephone or in the office. There was a tape recording of telephone calls made from Aspen Lodge, that is what I was referring to "elsewhere."

Q. Do the tape recordings that you just described plus the tape recordings in the Oval Office and the tape recordings in your office in the Executive Office Building constitute the totality of the tape recordings that you are claiming as presidential materials in this litigation? A. Well, let me explain. You did not mention telephone. The telephone in the Lincoln Sitting Room was recorded, none other. That was the one I used as an office in the residence. No other telephones in the residence were recorded.

The telephones both in the EOB and the Oval Office were recorded. The Cabinet Room also I don't think you mentioned, that was recorded. Beyond that, as far as tape recordings were concerned, there were none, as I said. And I say this only based upon what I have been told and what I have understood.

I understand that during the Johnson Period there were tape recording systems that covered telephones of members of the staff, and whether that is true or not I am unable to say. I have understood that, but I want the record to be clear here that there were none of the telephones of members of the staff that were recorded, as far as I was concerned. I have no knowledge of that. What

they may have done you would have to ask them.

Q. Were any of your conversations with foreign heads of state or foreign governmental officials, when you traveled [122] abroad, tape recorded? A. Oh, by them always.

Q. By you? A. Never.

Q. On Page 12 of your Affidavit, in Paragraph 19, you give as an example what you term your wife's personal files, "her record pertaining to the White House restoration project which was funded entirely by private contributions and which she voluntarily initiated and supervised."

Is the list of those, as to who contributed to the White House restoration project, a document that you claim as one of your presidential materials in this lawsuit?

A. Yes. Well, I don't know whether we want to quibble about it. It belongs to my wife in that instance, but my wife intended to give all of her papers – she has already expressed that intent to me – all of her papers to the White House and – could I elaborate a moment with regard to that? This may anticipate the question.

Q. Yes. A. I have indicated, for example, that I consider total privilege, and I am sure all counsel would agree with this, any conversations that I have had, private conversations, with my wife, my daughters, my sons-in-law, other members of my family. However, I had a number of official, what I would consider official conversations with my wife and with my daughters. For example, my wife took three good will trips abroad, two to Latin America and one to Africa and I had extended conversations with her in the office and the Oval Office concerning these [123] trips.

She also was the leader, in terms of a program very close to my heart and hers as a former teacher, that is The Right to Read Program. And I had many conversations with her on that program.

The White House restoration project has already been mentioned. The other programs, in which both she and my daughters were involved, was the Legacy of Parks Project. I was unable often to do the dedications and so forth and therefore any conversations in that area were involved.

Both of my daughters worked at varying times as volunteers with retarded and underprivileged children from Washington and I had conversations with them about those projects.

What I am indicating is very simply that my wife and my daughters were very active in those areas. Also I should point out that in addition to what we would call simply official or official family activities, that they were active in the campaigns. They would make campaign appearances and I would discuss that. So they were engaged in political activities. So when I speak not just of the privilege but when I say conversations with my wife and daughters would never be disclosed, I would say that any conversation that I would apply the same guidelines to her and I have discussed this with her as with my daughters that I applied to myself.

Q. Thank you.

Mr. Nixon, is the Gift Register, which was prepared by the White House Gift Unit listing gifts presented to you or [124] family by foreign heads of state or officials of foreign governments among the presidential materials that you claim in the case? Are you familiar with the Gift Register?

A. I know the Gift Record Unit, because the individual in charge of that said that Mrs. Nixon had been most scrupulous. She was not commenting upon any others in terms of reporting all gifts and turning all gifts in, of course, and having them recorded so that they could eventually be delivered to a library.

Now, if you are referring to the gifts themselves, it

would be my intent that they should be put in the library as they are in other libraries, the Johnson Library, the Truman Library, and the rest, particularly the State gifts as well as some from private citizens here in this country. But if you are talking about the lists, I don't quite know what you are talking about.

MR. MORTENSON: Counsel, if I might interrupt. There has been described in the Nixon v. Sampson matter, of which you are counsel of record, the official register of gifts, under the Foreign Gifts Act, or whatever it is called, have been turned over to the Department of State, which is the repository of that registration and therefore not included along with the presidential materials, beyond that material which has been introduced in that case. And because the Register does reside in the State Department, according to that testimony, it obviously is not included in the presidential materials claimed by this lawsuit.

THE WITNESS: Let the record show, however, in view of [125] some of the things that have been written by some of the reporters, for whom I have, of course, great respect, and probably because of lack of information, that every state gift received during the period I was President of the United States by me or by my wife has not only been recorded but also will be donated to the library. None have been sold and none have been appropriated. All stories to the effect of that are to the contrary and totally inaccurate.

MR. KRULWICH: Thank you, Mr. Nixon. I have no further questions.

EXAMINATION BY MR. GOLDBLOOM:

Q. Mr. Nixon, I am Irwin Goldbloom and I have with me David Anderson. We represent the Defendants United States and General Services Administration.

I would like to go back briefly over some of the ground that you covered this morning about the scope

and nature of the presidential materials.

A. I didn't get that.

Q. The scope and nature of the presidential – A. Oh, the scope. I see.

Q. I believe you indicated that in your Affidavit that in many instances there are letters written to the President by citizens concerning matters of national or domestic affairs, such as circumstances involving Lieuteneant Calley; is that correct? A. Oh, yes.

Q. Isn't it fair to say that the White House receives [126] thousands upon thousands of letters on a regular basis daily from citizens around the country on all matters or many matters of national concern? A. Yes.

Q. Is there in the White House a unit that is designed to prepare responses to these letters from citizens or others who have communicated with the President? A. Yes.

Q. And for the most part unless there might be an unusual circumstance, most of these letters would not come directly to the President's attention; is that correct? A. One moment. That may have been the case and may be the case with some Presidents but not with me. I had prepared for me on a weekly basis a summary of the mail, the issue breakdown, the number of letters received on one side or the other. In addition to that I wanted to see a sampling of mail that had been received, for example the Calley Matter and wherever the letters involved a major issue it became necessary then to prepare an adequate response. And I took personal responsibility for preparing that response. Of course, staff members would submit their versions, but I believe I found that in many years of public life people who received letters from the President, you would get them framed. I don't mean my editorial ability was much greater than those in the writing section, but I did a great deal of it myself. And so I saw a considerable amount of mail.

I should also point out in that connection that a great many, a great number of letters were written to Mrs. Nixon, [127] to which she responded personally.

Q. To some extent some of this mail that was directed to the President may have been sent or delegated to the various departments, agencies for response in the event that it referred to a particular matter. And in that instance the White House may have received a copy of the response that was sent by the answering agency or department. Is that a correct understanding? A. Correct.

Q. Now, I believe you said this morning that approximately, as an estimate, two hundred thousand of the 42 million estimated number of documents may have come to your attention at one time or another while you were President. A. Just a rough estimate.

Q. Is it fair to say that if a matter was brought to your attention it had some relative importance as compared say with the documents that didn't come to your attention? A. Of course.

Q. Now, in connection with the papers in which your immediate staff members prepared for you or for each other in connection with matters that you had to act upon, is it correct to say that these matters touched upon some of the most sensitive issues regarding this country? A. We are talking now about papers or letters or both?

Q. Papers. We are talking about memoranda or papers which were brought to your attention. A. Yes.

MR. MORTENSON: Let me ask Counsel to clarify what he means by "sensitive matters."

[128] THE WITNESS: Are you referring to basically national security matters only?

MR. GOLDBLOOM: No, but that would be included.

THE WITNESS: What else would be sensitive?

MR. GOLDBLOOM: Defense in particular and economic policy.

THE WITNESS: Do you include that as sensitive?

MR. GOLDBLOOM: I was using that in terms of national security.

THE WITNESS: As you are quite aware, matters in that area, you are talking about classification, and you don't use top secret classification or something in the economic field. It is only used in a national security field. I am not trying to quibble, but I just want to be sure I understand the question.

MR. GOLDBLOOM: I didn't intend to use the term sensitive in any classification.

THE WITNESS: I see.

MR. GOLDBLOOM: But rather –

THE WITNESS: Important.

MR. GOLDBLOOM: – important to the country.

THE WITNESS: All right.

BY MR. GOLDBLOOM:

Q. This would include national security and foreign affairs matters? A. Yes.

Q. And matters involving the administration of laws, the execution of laws by the President, and matters of economic policy, domestic – [129] A. Yes.

Q. I believe you testified that the taping system that we have referred to was originally installed for national security, particularly for national security purposes.

MR. MORTENSON: I don't believe that accurately reflects the testimony given.

THE WITNESS: What I believe I testified to, and this will save the reporter going back to have to read his notes, was this: That the question which was raised as to whether or not the taping system recorded was primarily for purposes of writing my memoirs.

I pointed out that President Johnson had mentioned that particular factor in recommending that one be put in. I said as far as I was concerned I considered it important from the standpoint of making the historical

record, having in mind also certainly as a subsidiary, but not then the most compelling reason, the possibility that sometime in the future I might do some writing and that having available the tapes would be helpful in seeing that it was accurate. I pointed out that as far as I was concerned, too, that I was particularly interested in the national security area but I did not limit it to that because there are other areas which I have also indicated, the matter of Welfare reform, the desegregation issue, the issues which seemed so miniscule but are so important. Some like abortion, et cetera. All of these, of course, are on tape.

BY MR. GOLDBLOOM:

Q. Mr. Nixon, I am going to read from a portion of a press conference that you gave on August 22, 1973. A portion of [130] your answer, which appears on Page 1018 of Presidential Documents, weekly compilation of Presidential Documents, for Monday, August 27, 1973. And I quote: "It was put into place" – this is referring to the tape – "It was put into place again in June of 1970 (1971) because my advisors felt it was important in terms, particularly of national security affairs, to have a record for future years that would be an accurate one but a record which would only be disclosed at the discretion of the President or according to directives that he would set forth." Do you recall making this statement? A. Yes. I was wrong, incidentally, about the date. I thought it had been put in earlier than that. I was wrong. It did not go into place until February, as I recall, of 1971.

Q. Is it important in national security affairs to have a precise record of our dealings with foreign countries, foreign leaders? A. It is very important.

Q. Is that because our position in foreign affairs depends upon sensitive and important negotiations with foreign leaders of foreign countries? A. Yes, sir.

Q. Is it fair to say that contained – A. Just a second.

(At this time the plaintiff and plaintiff's counsel confer out of the hearing of the reporter.)

THE WITNESS: I am sorry. Let the record so indicate I consulted with Counsel on a legal matter.

[131] BY MR. GOLDBLOOM:

Q. Is it fair to say that included, among the presidential documents and in particular the tapes, are matters relating to national security and foreign affairs which might not be found elsewhere in government documents or records? A. I would say that that would be, if you know the operations of the White House National Security Staff in our Administration and the current Administration, I assume, that that would not constitute a significant problem, because my relations with Secretary Kissinger and the head of the National Security Council were so close in an official way that there was nothing that he did and nothing that I did or said in our conversations with foreign leaders that we did not report. So as far as anything that occurred during the meetings that I have had abroad or at home, whether they were taped or not taped, they weren't taped abroad, of course, and at home despite my usual – my desire to have one-on-one meetings from time to time, it was more often the custom for both sides to have a notetaker. So in the files of the National Security Council, I believe Dr. Kissinger is still there as well as being Secretary of State, are all relevant materials that President Ford would need and for that matter a future President might need. And I am sure that continuity would be continued.

Q. You are saying that Dr. Kissinger has access to your presidential materials insofar as they relate to national security and foreign affairs matters?

(At this time the plaintiff and plaintiff's counsel [132] confer outside the hearing of the reporter.)

MR. MORTENSON: Mr. Reporter, would you repeat the question.

(The pending question is read by the reporter, as requested by counsel.)

THE WITNESS: No. Anyway, my answer may have been confusing. Dr. Kissinger has his own file and I have my presidential files. Dr. Kissinger's files are complete and all materials that have to do with our negotiations with Russia, with Chou En-lai, with Mao Tse-tung, with Sadat, needless to say the European and Latin American leaders, ad infinitum, all those materials are in the files of the National Security Council.

As far as my particular files are concerned, where the matters were specifically dealt with by me or where there was a meeting that I had, of course I have my own copy. A pretty good example of that is the controversies over the famous Thieu letters. As soon as that controversy arose, the first I heard about it was when I read in the paper a statement by Mr. Nessen, the Press Secretary, that a review of the Thieu letters indicated that "they were on all fours" or at least consistent with the statements that I had made publicly about any communications with Mr. Thieu.

The point I am making is that I gave no authority to Dr. Kissinger to go into my files. And he didn't go in my files. He didn't have to, he had them.

Q. Well, to the extent that Dr. Kissinger may not have had access in his files in the National Security Council, do you [133] know whether he has had access to presidential materials for the conduct of his current functions?

MR. MORTENSON: I object to the question. I think that Counsel for the government is aware of the procedures that have been set up for access by the NSC members to the presidential materials and records and in what instances they have not had access, and that is ade-

quate basis and is the best evidence of such access.

MR. GOLDBLOOM: I don't know that that is the best evidence nor do I know that it is necessarily precluded from being the subject of this deposition.

One of the contentions of the plaintiff is the right of dominion and control over presidential materials and I think it is important to explore the amount of access or the nature of access on certain types of documents.

MR. MORTENSON: Well, excuse me, Counsel. To the extent that you are focusing on what access has occurred since President Nixon resigned from office, and particularly since the imposition of the Court Order which prevents his access, except under specified conditions, but which permits with notification to counsel the review of materials for ongoing government purposes, that that information is best obtained from members of the NSC who have had the direct access, not by plaintiff some three thousand miles away who has not had access.

MR. GOLDBLOOM: You are willing to stipulate that there has been access to presidential materials.

MR. MORTENSON: I can't stipulate if members of the NSC have had access, I assume they have.

[134] THE WITNESS: Do they?

MR. MORTENSON: I don't have the NSC records.

THE WITNESS: Let me say this. Knowing Dr. Kissinger, everything that is in the presidential files he has a copy of. I can't say the contrary however.

BY MR. GOLDBLOOM:

Q. Mr. Nixon, if there is a reason to maintain an accurate record of presidential activity in the area of foreign affairs and national security, isn't it true that that reason for an accurate record is to enable a President exercising Constitutional powers to know precisely the matters relating to national security in foreign affairs for his exercise of his powers? A. Well, wouldn't it be better

if I answered that question by example and then I can be very precise.

When I became President I succeeded President Johnson who was, of course, a member of the other party. However, despite the fact that we had been opponents in the campaign, we developed on a parallel basis at all levels for consultation and briefings. Rusk briefed Rogers; Rostow briefed Kissinger; Johnson briefed me in great detail. Also following, after coming into office, due to the fact that the Vietnam War negotiations, you know, they had the bombing halt just before the elections, and negotiations were still in process, Dr. Kissinger on several occasions met Mr. Helms on several occasions at my direction, and General Haig talked to the President, went down to see President Johnson and Mr. Rostow [135] to see what the status of the negotiations had been and where they should go. And they had absolutely no problem at all. And Secretary Rogers, in his relationships with Secretary of State Rusk, had no problem.

I may say, too, looking back over the hisotry of this country, that even when one party succeeds another that we have become mature enough that this kind of communication, between Presidents particularly, is now standard and should be. As far as I am concerned there is, of course, as you would assume, no problem as far as cooperating with President Ford and there will be no problem as far as cooperating with a future President in the event Mr. Ford is not the President, as long as I am alive.

Q. In other words, our foreign policy involves continuity? A. Yes.

Q. And the President in this regard is more than a person, he is an institution in a sense. Is that fair to say? A. No, I think you can't say that the President is just an institution or for that matter because each President is different. Each President develops his own policies. Some

want to start with an absolutely clean slate and they sweep out all of their predecessors'. They don't want anything to do with any of the previous policies.

There are instances when it is necessary for a President to have communication with a former President. For example, President Kennedy had several communications with President Eisenhower, when he thought it was necessary, and [136] there was cooperation.

Q. That is our experience in modern times. A. It is and it will continue to be now, particularly will be in my case, because of my knowledge of the necessity for continuity.

But I wish to point out, if I could, to Counsel, that that continuity need not be obtained and should not be obtained at the cost of destroying the principle of confidentiality. You have to weigh – we have problems to weigh and I have already talked about my strong feelings with regards to the necessity to maintain the principle of confidentiality and separation of powers.

I should point out that we can have both. We can have or maintain the principle of confidentiality and that means the President should retain control over his papers and so forth. But at the same time that is not inconsistent with maintaining continuity. That has not been the case in the past and we have not had a serious problem in recent years and to my knowledge we have not now and I don't see any coming up in the future. Certainly in view of the fact that this legislation deals only with my presidency, there is no chance whatever that that will happen.

Q. Could the principle of continuity be destroyed or undermined by concepts of private property of a former President? A. That would assume that a former President was irresponsible and put his own views about the materials that were presidential materials, his own views with regard to his right thereto above the interest of the country. And despite [137] differences we may have as to who should occupy that office, I can think of no man

in either party that would do that at the present time. And incidentally, that would include about forty people that are now running for President or Vice President.

Q. I believe you made some reference this morning, Mr. Nixon, to classified documents and the interests of a former President in abiding the rules and regulations and the outstanding executive orders concerning the use of dissemination of classified materials. A. Correct.

Q. Do you agree that a former President, with respect to his presidential materials, must so abide by executive regulation authorities concerning the use of and dissemination of classified materials? A. I not only agree with it but I have – again we can get to a precise example.

Shortly after President Johnson left office, when he had started writing his memoirs, he called me not once but almost every couple of months asking for more archivists who had the experience and the qualifications to declassify materials, so that he could use it in his memoirs. In other words, he knew that he could not use and should not use classified materials in his memoirs. That was his practice, that was President Eisenhower's practice and I am sure it would have been President Kennedy's had he lived. It certainly was President Truman's practice and naturally would be mine.

As I said, President Johnson assumed that he could not use a classified document unless he got permission. Here, [138] when we talk about documents or presidential materials, I should say, and in the national security area, they are imbued with a public trust, they are different from what you have described earlier as being sensitive in the domestic area. And where those materials are concerned, where they are imbued with a public trust, then no former President, even though he has control thereof as to their disposition, no former President should disclose them or for that matter maintain them unless or except with the consent of or an understanding with the incumbent President.

(At this time the plaintiff and plaintiff's counsel confer out of the hearing of the reporter.)

BY MR. GOLDBLOOM:

Q. Moving on to a slightly different subject.

In Paragraph 5 of your Affidavit, on Page 3, you indicate various different roles that the President serves as "Chief Executive but is a major force in foreign affairs, a formulator of domestic policy, a leader of his political party, a politician in his own behalf, a private citizen with personal friends and associates, and a husband and father to his family."

I believe this morning you indicated with respect to documents that may relate to – well, that are included among presidential documents –

A. Presidential material.

Q. – presidential material there is an intermixture of these roles and that in some instances where the President is acting as Chief Executive he is also acting in a political [139] sense, particularly where he is faced with a Congress of a different political party. A. Even when he has a party of his own. Mr. Roosevelt learned that after 1938, as you recall.

Q. In a sense, isn't it fair to say that in many respects the various roles of the President are contained throughout most of his activities, the roles that you have indicated in Paragraph 5, and that no one role is sharply defined in terms of his activities? A. Are you suggesting, if I get the question, that the roles are intermingled in conversations?

Q. Well, I am asking you whether or not they are not in fact intermingled in fact.

For example, the President taking action in an official capacity under his constitutional or perhaps statutory powers might properly take into account political considerations concerning Congress in taking action. Is that correct?

A. Yes, he must.

Q. The President is a leader of the people and in a sense his personal health is a matter of public concern. So to the extent that matters that one might consider to be quite personal to the average citizen might also be matters that would be effected with public interest. Would that be fair to say?

MR. MORTENSON: Let me ask, Counsel. Are you saying members of the public would be interested in learning the President's health? Are you saying they have an interest in knowing what the President says to his doctor?

MR. GOLDBLOOM: No. I am saying they are, or I am asking [140] whether it is fair to assume that the members of the public are interested in knowing what the President's health is.

THE WITNESS: Oh, yes. Yes. And I mean this is growing out, as we know, of the rather tragic experience of President Wilson, who for fourteen months was unable to really serve in the office. And the tragic experience of Franklin D. Roosevelt, perhaps that is questionable, but some believe that he had health problems in the end.

But it has been customary in recent years, particularly after President Eisenhower's serious illnesses, for reports to be made publicly with regard to the annual physical examinations. I have had those reports made. On the other hand, I distinguish those reports from conversations that I have with my doctor and I have both with regard to how I feel and what I ought to do about my health to make it better or how to preserve it or what have you.

BY MR. GOLDBLOOM:

Q. Now, in connection with the development of the taping system, the installation of it by the Secret Service. Do you know whether there were any instances when references were made, and I say this prior to any public controversy concerning the existence of the tapes, whether they were ever used for any governmental pur-

pose? A. No. To my knowledge no tape was ever transcribed. And as far as I know, none was ever listened to until this controversy began.

Q. Do you know whether the Secret Service agents who [141] operated the system had the capability of listening to the tapes? A. Yes. It is my understanding that the Secret Service agents who operated the system did have the capability of listening to the tapes. I have no knowledge that they ever did.

Q. The installation of the taping system, was that financed by the government? A. I understand it was. Both the Johnson and Nixon Administrations it was a government project and I understand the Kennedy Administration as well was financed by the government.

MR. GOLDBLOOM: I have no further questions.

MR. MORTENSON: Off the record.

(A brief recess is taken at this time.)

MR. GELLER: Mr. Nixon, my name is Kenneth Geller and I am the attorney with the Watergate Special Prosecution Force.

As you may know, the Special Prosecutor intervened in the civil action last January in order to protect our interests in certain of the presidential materials of your Administration, which were relevant to our ongoing investigations and prosecutions and from the outset our interests in this lawsuit has been limited.

As you may also know or as you are certainly aware, several months ago procedures were instituted between our office and counsel representing you by which the Special Prosecutor has been given access to certain of the materials which we requested in order to carry out our responsibilities.

The Special Prosecutor believes that we have [142] received good faith compliance with substantially all of our requests up to this time and we expect to have full compliance in the near future, at which point we intend

to withdraw from the lawsuit.

My understanding, by the way, is that there are still is relatively few outstanding requests at this time for materials.

Finally, it is our understanding that the accommodation which we worked out with your counsel is an ongoing one and that if we have any future requests for material the procedures which we have instituted in the past will again be followed to carry out those requests.

Having explained the posture of the Special Prosecutor in this lawsuit, I believe that the few questions I intended to ask were covered by counsel for the Justice Department and therefore I have no questions.

MR. MORTENSON: Off the record.

(Discussion, off the record.)

MR. MORTENSON: It has been agreed among counsel for the plaintiff and the government defendants and the joint Intervenor Defendants that plaintiff's Affidavit, which has formed the basis for some of the questioning during this deposition and which has been submitted in this litigation shall constitute the direct testimony of the plaintiff and shall be admitted as such subject to appropriate objections by parties seeking to interpose them and that the questioning by the joint Intervenor Defendants and the government defendants taken today shall constitute the cross-examination, again subject to any appropriate objections on the admissibility of [143] the evidence or the testimony elicited.

MR. DOBROVIR: With one further proviso. Of course, subject to the fact that we do not waive any rights we may have with respect to those questions that the witness was instructed not to answer and did not answer.

MR. MORTENSON: All right. I don't ask you to waive anything.

MR. DOBROVIR: Thank you.

MR. MORTENSON: Now, Mr. President, let me backtrack over a couple of the areas of questioning.

EXAMINATION BY MR. MORTENSON:

Q. Did you prepare speeches which you intended to deliver during the time you occupied the Office of the President? A. Yes.

Q. Did any of those speeches, which you prepared, relate to political matters as opposed to matters official in character? A. Oh, yes.

Q. Did you personally prepare these? A. I spent more personal time on them, as I have indicated earlier, than most recent Presidents. But I had excellent assistance from members of my staff. When it came down, however, to the major thrust, the theme, the final editing, I have very strong feelings about that and take responsibility for any grammatical errors.

Q. Were portions of any of these speeches prepared by you personally without the assistance of any members of the [144] staff? A. I would say that more than half was prepared by me personally.

Let me, if I could, explain how I went about preparing a speech. We are all a little different, you know. All of you are lawyers, I guess. I take the yellow pad and I sit down before seeing anything from any of my associates on any major speech, like an inaugural, or State of the Union, or report to the nation on what is going on in Vietnam or China or something like that, and make very extensive notes maybe on eight or ten pages. After I had made those notes I would then call in the individual, normally it would be Mr. Price, sometimes Mr. Buchanan, who was going to work on the speech, and run over the notes with him and ask him, with the help of others on the speech writing – in the speech writing group, to prepare a draft. The draft would come back and, of course, would always be much too long. I then would cut it back. And because the speech writers obviously would have some ideas to stimulate my own thinking, I would prepare other sections to go into the speech. At the same

time, in following this process one goes through and it is an agony of trying to create a speech, to get the ideas down on paper and to get the written word so that it can flow into the spoken word. Many extraneous ideas come to mind and what I would do in this instance would be either to write out again on yellow pad or to dictate on the Dictabelt extraneous ideas not to be included in the speech but to be used later. I would say over a period of five and a half years, and perhaps some of the better speeches were never [145] made. I have, oh, at least several hundred pages, fifty thousand to one hundred thousand words of speech ideas, writing ideas that I intended to use at a later time. Whether it is precedent thereafter,... For example, and I won't belabor this any longer, but I thought it might be interesting to our group of visitors here, when I wrote the article for Foreign Affairs in 1967 on the opening to China, it didn't create much stir except among sophisticates who read Foreign Affairs.

After the opening occurred, I did a great deal of thinking about what the future of the world would be fifteen to twenty years from now when the Chinese, already the most populous nation in the world, would then have a very significant nuclear capability and in addition be a very significant economic power in the world, how this would affect not only the United States but our relations, the relations of the United States with Japan and Southeast Asia and the Soviet Union in particular and, of course, with Western Europe and the so-called Third World.

I recall this, for example, as one of the very extensive monographs that I have written. It is in my presidential papers. It is in what you call the China Folder.

The announcement of going to China, as you recall, was two minutes. What I wrote before boiling it down to two minutes was one hundred pages.

Q. In that regard, do you intend in the future to write on matters of foreign affairs and domestic policy? A. Yes.

Q. Do you intend or did you intend, at the time the materials that you have just described were generated, to [146] utilize these materials either as they presently exist or in some revised form to formulate the basis for your writings on matters of foreign affairs and domestic policy? A. Yes. As a matter of fact, I would label them "Speech Material," or "Book Material."

Q. Has any of this material been published? A. No.

Q. Or delivered in a public forum, to your knowledge? A. No. And as a matter of fact, this material I would put in the file and would not give to my speech writers, not that I was trying to keep anything from them. I didn't want to divert them from what I eventually determined would be the theme.

Q. Now, in your proposed writings on matters of foreign affairs and domestic policy, how would that be affected if all of the materials within your files, which you had previously generated, were made public? A. It would be worthless.

Q. Would it influence your ability to write on these issues? A. Oh, I could still write on them but it would perhaps – oh, I am not an expert on what would be newsworthy and what would not be materially newsworthy. What is particularly important in my view is that these are thoughts that I had. I am not sure in all cases that I will come down exactly the same way, because the world is changing so much today. But these are thoughts that I have had in the field of foreign policy and some in domestic policy, as well, which I hope to [147] enunciate. Frankly I hoped to in my second term. And once I complete my first volume of my memoirs I would hope to write in this area. These are areas and these I should point out are primarily in foreign affairs, very little in the political area.

Q. Do they include political matters? A. Oh, yes. Yes, I had some ideas with regard to, for example, the two party structure in this country; with regard to the retirement or, shall we say, the age limits for members of the House, Senate, Court and et cetera, et cetera. Some that were even more novel, that I have not yet determined will be included in an article or speech but that might well be.

Q. Were these materials that you have just described left in the White House at the time you resigned on August 9th? A. They were.

Q. During your term in office, – A. Let me point out. They were left because I had mentioned earlier that I, of course, had some materials in my office, but these would be in my speech files because the thought which brought this forth was generated there.

Q. You, during your term in office, were you aware of any prior Presidents' practice with regard to the use of their presidential materials in the preparation of their memoirs? A. Oh, yes, I was quite aware of that. I read most of them.

Q. Did you ever discuss with President Johnson the concept of private ownership of the presidential materials? A. I think it would be more proper to say he discussed with me vehemently.

[148] Q. Would you describe that conversation. A. Well, as a matter of fact I had two conversations with him. He suggested, when I called on him at the White House between the election and the inauguration, that I should give my vice presidential papers to the government. I hadn't thought of it before and I don't know why I wasn't aware of the Act. And I followed his advice and did make a gift of the vice presidential papers to the government, as I think it has been reported to a certain extent.

A year later, and I believe it was late, very late in the year, as a matter of fact just before Christmas of 1969,

President Johnson came in to see me and we had breakfast. And as you know, he was a man of many moods, but he could sometimes have a towering rage and in this instance that rage was directed against what he called the Williams Amendment, which I recollect was an amendment which removed or revoked that portion of the law which allowed gifts of public papers to be deducted for tax purposes. And President Johnson said to me, he said, "Now, in view of that fact," he said, "Just remember your papers are yours." And he said, "Don't you ever give them to the government, because they are not going to let you deduct them. That is going to have a bad effect on all people inthe future. Libraries are going to dry up. Those papers are yours. You should leave them to your children."

I didn't follow his advice. Nevertheless he did indicate his view.

Q. Despite his advice, do you intend to place your presidential papers in a presidential library? [149] A. I not only intend to place my presidential papers, but my vice presidential and my congressional and my senatorial papers as well as a considerable amount of papers that were accumulated during the years I was out of office.

Q. You have stated in your Affidavit and in testimony given today at the deposition that you engaged in private or personal conversation with members of your family. Did any of these conversations occur in the White House Oval Office or on telephones which were connected to the taping system? A. Well, I must say that most of them occurred on telephones from either the White House, either from the Oval Office or the EOB or the Aspen Lodge, as the case might be. Several occurred in the Oval Office and some in the EOB and, of course, some in the residence where there was no taping system whatever.

Q. If the – A. The number of telephone calls was astronomical, I just say.

Q. If the contents of the recordings made in the White House during your term in office were disclosed, would it have any impact upon your ability to associate with individuals whom you had previously associated with? A. Oh, yes.

Q. Would you explain what impact that would have. A. Well, the discussions that occurred in a President's Office, particularly when the individual who was talking to the President feels that he can talk in confidence, as our Affidavit indicates were, not only free-wheeling but sometimes blunt and [150] sometimes clearly apart from what we would use, we would describe in the narrow way of being personally embarrassing, they would be quite honest in giving their views.

For example, this would be particularly the case where an appointment was being made for the Judiciary or to the Cabinet or to other top government positions. Here are all the files, the raw files of the FBI and letters would come in from various individuals. Members of Congress would either come in or write indicating their pros and cons and so forth and so on. And the individuals who wrote or talked to me, as Mr. Morris Ernst already indicated, would write and talk to me in a very direct way and say things. And if they became public, it would not only be personally embarrassing to them but more likely would make it impossible for me to have a continuing association with them in the future on the basis as I have had in the past. I don't mean by that that the President in the White House listens to and expresses rather derogatory opinions about every individual whose name is up, but in order to make the right kind of appointment, for example, you have got to consider where a lawyer is concerned not only his legal qualifications but his relationships with his family, his personal habits, his reputation in every respect, and all of that of course would be considered before a decision was made.

The same would be true with regard to some of the very controversial political issues, and I mean personal issues that came in. I am sorry, domestic issues as distinguished from foreign policy issues. Needless to say, foreign policy, the enormous division in the country with regard to the war, all of [151] that, it was bluntly discussed and is well known. But the country also has had very, very strong disagreements with regard to such volatile subjects as busing, desegregation, Welfare reform, et cetera. And I have had discussions, for example, with members of Congress, both the House and the Senate, of both parties, some of whom have been my friends going back over twenty-five years, where they thought they were talking in confidence and where if what they said got out it might not only affect what they would feel is their right to express themselves freely in the future, because every man must live with his public statements. He has great enough difficulty doing that. But having to live here with private statements that he thought were off the record would be more difficult. But insofar as I am concerned, of course, it would have a most devastating effect in terms of many of the individuals who talked to me or wrote to me in confidence and then found their confidence has been destroyed.

Q. During your term as President, did you ever find it necessary, either for the effective conduct of foreign affairs or the promotion of domestic policies, to depend or request of President Johnson or of members of his family access to any of his presidential materials? A. I have no recollection of that. When I say that I should point out that as I did in answering your earlier questions here, my relationship with President Johnson, while we were political opponents, my relationship was one that I valued very greatly and was one where at his insistence, not only his insistence but only with his agreement had various [152] contact not only with him by phone but

also at times in person and also by my sending Dr. Kissinger down and Mr. Helms, General Haig, and he was their friend.

Q. And after the time that President Johnson died, in your experience in the office is it your opinion that had President Johnson destroyed his presidential materials, that that fact would have precluded you from conducting an effective foreign policy? A. We could have conducted an effective foreign policy, yes.

Q. Did you have access to presidential materials as part of the conduct of your foreign policy? A. We had access. First we had access to enough material, as a result of our consultation during the transition to go forward, to conduct an effective foreign policy. Also you must realize when President Johnson died, Mr. Rostow is still living and Secretary of State Rusk is living and Mr. McNamara is living and all of them, incidentally, have been extremely cooperative, being of assistance whenever we thought there was a need to go back into the past history in order to be sure we made good history for the future.

Q. Early during this deposition counsel for the Joint Intervenor Defendants read to you a list of government organizations and asked you whether the files of those organizations or the materials generated by them were claimed by you as presidential materials in connection with this litigation. Do you know whether the organizations which were recounted by the Joint Intervenor Defendants' counsel were [153] federal agencies or commissions or what status they were? A. I regret to say I really don't know and I doubt if President Ford knows or President Johnson knew, there are so many. Most of them, incidentally, are useless.

Q. That too. A. I stand with that. Not that people are useless but the product. So I would be unable to say, Mr. Mortenson, in answer to that question, be helpful in answering the question by Mr. Dobrovir, that as far as

these agencies are concerned, whether they were set up by statute or whether they had been set up as a result of an Executive Order or whether they were agenices that might have even been set up on an ad hoc basis without even an Executive Order, you just ask a group of people to report, I would be unable to say.

Q. When a staff member left his position in the Office of the President, are you aware of any instructions to them or any policies which were adopted by your office which would preclude them from taking from their files matters which they deemed to be purely personal? A. No, on the contrary. However, instructions were given to all staff members. Incidentally, that is another recommendation that President Johnson made to me very strongly during the period between the election and the inauguration.

The instructions were given to all staff members as well as Cabinet members that any papers that had to do with relationships with the President, conversations, for example with the Vice President or President or presidential business, should be left in the White House. And, as a matter [154] of fact, President Johnson recommended that his practice after every Cabinet meeting was to have somebody go around the table and pick up every scrap of paper.

Q. Would you describe for us in a bit more detail how conversations with, for example, congressmen, the conversation would relate not solely to matters which you describe as relating to official actions, such as veto of legislation but also to branch into conversation with politics and personal matters. A. To begin with, the fact that the conversations that I had generally with men and some women who were in Congress and the Senate, Margaret Chase Smith, that I had known them for many, many years, so we met on a person-to-person basis.

Second, I found that in dealing not only with members of Congress but also with members outside of government, a business leader, labor leader, educator or religious leader, and the rest, that in order to really plumb his thinking or hers, that it was even more necessary than it is when you are an ordinary citizen, to gain his or her confidence, to make him or her feel comfortable. And so it is what we call warming up the individual so that eventually when he comes to talk about the business that he is there to talk about, that he talks very frankly, with the feeling of confidence. That is why when a congressman or senator or other individual came in or would come in, the conversations were replete with references to family matters or their relations with their colleagues or their own health, their own problems and matters that are basically private in the light of it.

[155] There also, of course, would be innumerable times when political matters would be discussed with both Democrats and Republicans. They would talk about their opponents they might have in the primary or expect to have in the final campaigns and usually in not too complimentary terms.

Q. Are you aware of any official government document, such as a veto message to Congress or an enrolled bill which you signed being maintained among your presidential materials? A. Oh, absolutely not. That goes in the out box and goes to wherever they keep such things.

MR. SPOONER: Mr. Mortenson, when you use the term "such as," what are you including in this term?

MR. MORTENSON: I am including veto messages to Congress, including the appointment of officers of the Army and Navy and Air Force.

THE WITNESS: The Judiciary.

MR. MORTENSON: I am including the signing of enrolled bills and issuance of presidential pardons and any other document reflecting the final action taken pursuant

to a constitutional obligation of the President or those required under statutes.

THE WITNESS: He is limiting it, in other words, to what is required by constitution or statute and distinguishing therefrom those matters that might be, say, a speech you are going to make to the American Legion or something of that sort.

BY MR. MORTENSON:

Q. You have characterized a portion of the presidential materials, which I think at the time you were talking about [156] National Security related materials, as being imbued with the public trust, or at least that was your opinion. Does that opinion encompass other forms of presidential materials? A. Well, when we say imbued with the public trust, that is a phrase that I may have used too loosely or I should say, on the contrary, too precisely, because what I meant in the case of National Security material, that I would consider that a former President is inhibited from the disclosure thereof in making a decision in regard to disclosure thereof before getting permission or permission from whoever is the encumbent President which, of course, was the practice President Johnson followed with me.

Now, with regard to materials that have to do with revenue sharing or the energy programs or matters of that sort in the domestic area, I would not consider that that was material that could not be disclosed without consultation.

Now, as a practical matter, it would be, however, my practice if the issue involved was a hot one, for instance a domestic issue, and was before a present administration and if I had material that I thought might affect it one way or another I would, of course, try to be responsible enough to use that material or not to use it, depending upon what affect it might have on action under present

consideration. But I can think of no examples there.

MR. MORTENSON: I have no further questions.

FURTHER EXAMINATION BY MR. DOBROVIR:

Q. Mr. Nixon, Mr. Mortenson asked you about, if I am not mistaken, whether there were ever any instructions to your [157] staff about how to handle their personal records. Am I recollecting correctly? A. Yes.

MR. MORTENSON: Material that they considered to be personal.

BY MR. DOBROVIR:

Q. All right. In that connection then I would like to ask you if you are familiar with a document that was introduced in the other lawsuit in which you were plaintiff, Nixon v. Sampson, as Nixon Exhibit 8. It is titled "Donation of Personal Papers to the Richard Nixon Library," and at the bottom of it it says "National Archives and Records Service, General Services Administration, November 1972." A. Yes.

MR. DOBROVIR: Would you please mark this.

THE NOTARY: The three-page document handed to me by counsel, titled "Donation of Personal Papers to the Richard Nixon Library," dated November 1972, will be marked Intervenor Defendants' Exhibit G, to the deposition, for identification.

BY MR. DOBROVIR:

Q. My question is: Are you at all familiar with the contents of that document? A. I didn't know we were suing him. Go ahead. What is your specific question?

Q. First of all, are you familiar with it? A. Oh, yes. Yes.

[158] (At this time plaintiff and plaintiff's counsel confer out of the hearing of the reporter.)

THE WITNESS: My counsel informs me that he has prepared it so I must be familiar.

MR. MILLER: I have not informed you.

THE WITNESS: I had thought. I am sorry. I just assumed my counsel tells me everything but apparently he doesn't.

MR. MORTENSON: I think it is important for the record to reflect we may have to go back and pick up the question. I think my question was, Is he aware of any instructions to members of the office of the staff which preclude them from taking with them their personal materials.

THE WITNESS: Personal materials.

MR. DOBROVIR: Fine.

MR. MORTENSON: You are not aware of this?

THE WITNESS: I am not. This one I am afraid I am not aware of.

BY MR. DOBROVIR:

Q. Well, could you examine it and tell me whether this was the policy of your administration, with respect to disposition of files by members of your staff. A. Which paragraph?

Q. The whole thing, please.

(At this time the plaintiff and plaintiff's counsel confer out of the hearing of the reporter.)

THE WITNESS: This reflects my understanding. All right. As a matter of fact, it is personal correspondence of an [159] official that does not directly concern the work of the office and does not intend to be part of the official records. For example, part of a personal file maintained for his own personal use, they must be distinguished from official records.

MR. MORTENSON: I think the record should reflect, though, that while the witness has indicated this is his understanding of the position of his office, that we do not, for purposes of this litigation, adopt in total the verbiage used in the document, such as "official records."

MR. DOBROVIR: Now, this is not a question but I want to make a record of the following statements of Mr. Miller's letter to me of July 22, 1975, in which he says: "Plaintiff's Affidavit and your response to plaintiff's motion for protective order, which in light of the Court's Order of July 16, 1975, should set the parameters for the deposition."

Reflecting the understanding that Mr. Mortenson and I had reached on the telephone the Friday before, I would like to in that connection incorporate Paragraph 5 of the document referred to in that letter, Defendants' opposition to motion for protective order, which states "Finally, plaintiff asserts that he alone, assisted by others of his selection, has the right and thus should have the exclusive opportunity to cull through the materials, to select those that will be made public and those which will never see the light of day (¶ 21, "Certainly not the tape recordings;" ¶ 22,23). He asserts the exclusive right to determine what should be deleted from the tape recordings (¶ 23 at p. 17; see ¶ 24) and "To reserve for *my* own review" materials which "*I* consider" to be private (¶ 26; [160] emphasis added). Plaintiff's assertion of this right of exclusive control raises the issue whether he, as distinguished from other Presidents, should be granted this privilege by a Court of equity; whether on the record he has made he may be entrusted with the power to conceal evidence of his own activities that might reflect most adversely upon him. Only oral examination carries the possibility of eliciting testimony that would inform the trier of fact on this score." And that ends my quotation from that document.

This is in further response, Mr. Mortenson, to your question to me where in the pleadings in the case is stated the defense which I asserted to you as to the grounds for relevancy as to questions which I posed to the witness with respect to the discrepancies between his public state-

ments and the transcribed tests of certain tapes and with respect to material deleted from the transcripts of tapes which were made public. In the light of that, I renew my request that the witness be permitted by you to answer those questions.

MR. MORTENSON: Well, my response, Counsel, is that Paragraph 5 of your motion, or your Opposition to the Motion for Protective Order mischaracterizes grossly in several respects the allegations for or contentions made by the plaintiff in the suit. They speak for themselves and to the extent that you rely upon this to name the issues of this case you are obviously free to do so.

MR. DOBROVIR: I merely wish to point out, Mr. Miller in his letter to me reflected our conversation the Friday before and indicated what was stated in that pleading as well [161] as in the Affidavit sets the parameters for the deposition and you now disagree.

MR. MORTENSON: It clearly reflected what we considered to be the parameters of the deposition. It in no way implied explicitly or implicitly that any question that counsel put which he deemed to fall within the parameters of those are therefore proper. And upon that basis do we object, as well as others.

MR. DOBROVIR: I have nothing further.

FURTHER EXAMINATION BY MR. KRULWICH:

Q. Mr. Nixon, you testified, in answer to a question from Mr. Mortenson, that all documents reflecting your actions, reflecting your constitutional duties as President, were matters of public record. One of your duties under Article 2, Section 3, of the Constitution is to "Take care that the laws be faithfully executed."

Another duty under Article 2, Section 2, is that "The President shall be Commander in Chief of the Army and Navy of the United States."

Will you then agree that all documents or materials reflecting your performance as President, of your duties

to take care that the laws be faithfully executed are to be a matter of public record?

A. Well, that is a matter that has to be determined as has been the case with all previous presidents. It has to be determined when I examine the materials and the documents. As I said, I intend to be as forthcoming as I feel is proper and [162] I think that is repetition of a statement I have previously made on that score.

Q. Just to clarify then. There are in a sense two types of presidential types of constitutional duties. There are those normally represented by official action, such as veto messages, appointments, pardons, material that Mr. Mortenson talked about and others that are under the more general categories of your constitutional duties. The other is to take care that the laws be faithfully executed. Do you agree?

MR. MORTENSON: Counsel, I think it is a legal conclusion. You are asking the witness as to whether materials that are related to the faithful execution of the laws of the United States represent official documents. We have contended in this suit that those which are official are lodged in other branches of the government.

MR. KRULWICH: I am only asking a question directed to the questions you asked Mr. Nixon on constitutional duties and I am seeking an answer to the question you asked. He can answer the question I asked.

MR. MORTENSON: My question was to his knowledge –

MR. KRULWICH: I believe you asked him where the official records were and how they were kept of the official records and documents reflecting certain of his constitutional duties. My point, what I was trying to ask the witness, was whether there are other types of constitutional duties that are of a sort different from those that you asked him about.

MR. MORTENSON: I am sorry, Counsel, I don't

understand the question. If the witness does, –

[163] MR. KRULWICH: If the witness understands he can answer; if not, so be it.

THE WITNESS: What are you trying to drive at? Let me get at it that way.

MR. KRULWICH: Let me see if I can rephrase it.

BY MR. KRULWICH:

Q. Would you agree that in addition to constitutional duties under Article 2, such as veto messages, State of the Union addresses, pardons, reprieves, which are expressed as a final public document, there are also constitutional duties under Article 2 that are not expressed in the form of a final public document and in that sense are of a more general nature, such as the duty to take care that the laws be faithfully executed, which would be expressed only in terms of papers, memoranda, letters, that are not part of the public official record, in the same sense that a pardon or a reprieve or an act of Congress that you have seen is. A. You know, that sounds like how many angels on the head of a needle. I still don't get the drift of what you are driving at.

I will agree there are many presidential duties –

Q. Well, – I am sorry, I didn't mean to interrupt you.

MR. MORTENSON: Counsel, I think if the question is are there other duties, if the President has a duty to take care that the laws be faithfully executed, I think that is clear –

THE WITNESS: Yes.

MR. MORTENSON: – clear in the Constitution. The [164] question is: Are those reflected in documents? If you have a document – I mean, I don't know what you mean by that.

THE WITNESS: As Commander in Chief, do you mean are they reflected? They will be defined. You probably will find those in the Defense Department, I imagine.

BY MR. KRULWICH:

Q. Are there documents relating to your constitutional duty to take care that the laws be faithfully executed that would not now at the present be reflected in the documents that are presently public? A. I don't know. I don't – I haven't had access to those documents.

MR. KRULWICH: Fine. I have no further questions.

EXAMINATION BY MR. ANDERSON:

Q. Along the same lines, isn't it a fact that your official duties as President went beyond those specific duties with which you were charged under the Constitution and statutes? A. My official duties?

Q. You mentioned several duties which you were charged under the Constitution, such as vetos and State of the Union messages. Don't the President's official duties go beyond those specific responsibilities mentioned in the Constitution and statutes?

MR. MORTENSON: I think that is a legal conclusion, Counsel. I don't know we have established the basis for his legal opinion on it.

[165] BY MR. ANDERSON:

Q. Let me put it this way. Would not gathering public support for a program such as conservation or Welfare reform be related to presidential action?

MR. MORTENSON: I have got to interrupt. I don't mean to be argumentative in your attempt to put the question, but the question is a legal conclusion as to whether or not a President has to engage in gathering support for a program.

MR. ANDERSON: I am trying to ascertain Mr. Nixon's view of his responsibilities as President so we can explore as to the relation of the presidential duties.

MR. MORTENSON: He has used the phrase of official action as those duties imposed by the Constitution and by the statutes.

MR. ANDERSON: All I am asking is, is that the only term that you consider related to your official duties as President. Are the rest all private, personal or political?

MR. MORTENSON: And he has testified that he has documents relating to the official actions.

MR. ANDERSON: I am not asking about documents right now, I am asking about Mr. Nixon's conception of his role as President and whether it goes beyond the specific duties of which he is charged under the Constitution and statutes.

MR. SPOONER: Mr. Mortenson, I don't understand what your objection is. Are you saying Mr. Nixon cannot state what the duties of the President of the United States are?

MR. MORTENSON: What I am saying is, I believe that it is a matter of law what a President can be charged with doing under the Constitution and by statute and that if a President deems his [166] role as gathering public support for a program of inflation control as something which he views presidential responsibility, that is not necessarily an official obligation of the President even though he may view it as an obligation that he has. But his responsibilities or duties that are imposed on him as the holder of that office derive from the Constitution and statutes.

BY MR. ANDERSON:

Q. Do you believe that gathering support for a program of Welfare reform was related to your official duties as President or would you put that in the category of political and personal activities? A. Well, is your purpose to determine whether or not I would consider that such materials, as such, be held in private and not be made public? What are we talking about?

Q. Is the paper work that would be generated on such subjects related to offical presidential actions?

(At this time the plaintiff and plaintiff's counsel confer out of the hearing of the reporter.)

THE WITNESS: Of course.

BY MR. ANDERSON:

Q. Is this often intermingled with political considerations? A. Always. Virtually always, if you want to get success.

Q. And this is related to official presidential action, whether there is a statute or not on the subject; is that [167] correct? A. It can be; yes.

Q. When your staff works on these subjects which are both political and official, they are acting within the appropriate scope of their White House duties? A. Yes, they are acting for the purpose of carrying out the presidential programs, eliciting support therefore.

Q. So these are not totally political in any sense? A. The line between what is political and official, if that is what your question is, is a blurred line. I would agree to that. But let us come right down to the nut cutting on the subject of what you want to know is what I believe a President, any President, I mean after he leaves office or his family after he is deceased, what his policy should be with regard to making public his papers and other materials, what we call presidential materials. I have already indicated that I believe that the policy should be as forthcoming as possible. I have already indicated that I would take a very hard line in terms of national security and under no circumstances would I move from that area without giving the gravest consideration as to what might be a current national security problem. And that means, of course, getting the national security clearance.

I also indicated that I would take a very hard line, firm line, with regard to any conversations that I considered to be private and personal, ones that might be, apart from embarrassment in the Webster sense, but one that might

inhibit another person's right to speak freely, to associate in his political area or what have you, because he had relied upon – [168] when he talked to the President had relied on the fact that he thought it was going to be confidential. And as far as private matters are concerned, for example, I made a number of telephone calls and had a number of conversations with my daughter prior to her wedding. Incidentally, if I kept that all segregated, anyone working with reels of tape you know it is just (the witness snaps his fingers three times) and I wouldn't have anybody believe me, no government associate, not my lawyers, not because there is anything to me that would be embarrassing, but because it is private to listen to the conversation other than myself or her.

MR. ANDERSON: I have nothing further.

(The time is 4:25 p.m.)

/s/ Richard M. Nixon

Richard M. Nixon

[169] STATE OF CALIFORNIA
COUNTY OF SAN DIEGO. : ss.

I, Joseph F. Weitzen, a notary public in and for the County of San Diego, State of California, duly commissioned, qualified and acting, hereby certify that the deposition of Richard M. Nixon, plaintiff herein, was taken by Defendants in Intervention pursuant to the applicable sections of the Code of Civil Procedure, before me, beginning at the hour of 9:00 a.m. on Firday, July 25, 1975, at the Coast Guard Station, in the City of San Clemente, County of Orange, State of California; that before the taking of said deposition the said witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the testimony he was about to give in said action; that said witness was thereupon examined upon oral interrogatories propounded by counsel as aforesaid, and said witness made answer thereto, under oath, as hereinabove contained; that all of said questions and all of said answers thereto, as well as the

proceedings had at the taking of said deposition were by me duly taken down in shorthand and later transcribed into typewriting, as hereinabove contained; that I do further certify that the above and foregoing pages, numbered from 1 to 168, inclusive, contain a full, true and correct statement of all said interrogatories so propounded by counsel as aforesaid, and of all of the said answers made by said witness thereto, in the order in which said questions and answers were asked and answered, and of all of the proceedings had in said matter; that, pursuant to stipulation of counsel, as the same [170] appears herein, I delivered the original of this deposition to Richard M. Nixon, for the purpose of having the said witness read and sign his deposition, with the request that the said deposition then be returned to me for filing.

I FURTHER CERTIFY that the documents attached hereto and marked as Defendants' in Intervention Exhibits A through G, both inclusive, are the same documents referred to by both counsel and the witness, and as identified during the taking of said deposition.

I FURTHER CERTIFY that I am a disinterested person and that I am in no way interested in the outcome of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at the City of San Diego, in the County of San Diego, State of California, this the 30th day of July, 1975.

/s/ Joseph F. Weitzen

[SEAL]

[171] STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO. : ss.

I, Joseph F. Weitzen, a notary public in and for the county of San Diego, State of California, duly commis-

sioned, qualified and acting, in accordance with the stipulation entered into between counsel, as the same appears herein, that the foregoing deposition of Richard M. Nixon may be signed before any notary public, submitted the said deposition to said witness, who thereupon read his deposition and made such corrections as appear noted therein in ink, duly initialed by me; that thereupon said witness in my presence subscribed his name to his said deposition at the end thereof, and before me took oath that his testimony, as contained in his deposition, as corrected, was the truth, the whole truth, and nothing but the truth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at the City of San Diego, in the County of San Diego, State of California, this the 16th day of August, 1975.

/s/ Joseph F. Weitzen

[SEAL]

EXHIBITS TO
DEPOSITION OF RICHARD M. NIXON
[Excerpts]

EXHIBIT C

1.1 RICHARD KLEINDIENST AND RICHARD McLAREN MEMORANDUM, APRIL 23, 1969, WITH ATTACHMENT

[SEAL]

Office of the Deputy Attorney General
Washington, D.C. 20530

April 23, 1969

MEMORANDUM FOR:

Honorable John Ehrlichman
Counsel to the President
The White House

Re: *ITT-Canteen Merger*

In accordance with telephone conversation this morning, enclosed is a Memorandum for the Attorney General dated April 7, 1969, and a draft of proposed complaint to be filed under Section 7 of the Clayton Act in opposition to the ITT-Canteen merger. As you will note, the theory of the complaint is that this merger would adversely affect competition in the vending and inplant feeding business in the United States by reason of the vertical and reciprocity effects potentially resulting therefrom.

Active reciprocity, as you probably know, involves the use, normally by a diversified firm, of its purchasing power to assist its sales efforts. Recipricity tends to exclude small and undiversified firms from the market. It is generally recognized that active reciprocity by a firm of significant size involves a violation of the Sherman Act (see Flynn, "Reciprocity and Related Topics Under the

Sherman Act", 37 *ABA Antitrust Law Journal*, 156-168, 178-182 (1968)).

The Supreme Court has also stated: "Reciprocity in trading as a result of an acquisition violates Section 7 if the probability of a lessening of competition is shown" *FTC v. Consolidated Foods Corp.*, 380 U.S. 592, 595 (1965). In *Consolidated Foods*, the case was tried after the merger had taken place and the Court found that there had been seven instances of affirmative use by the acquiring company to make sales on the basis of a reciprocity pitch. The next question is whether we must wait for completion of a merger involving substantial reciprocity power and opportunity until after the merger is consummated. The court in *United States v. Ingersoll Rand Co.*, 218 F. Supp. 530, 552; affirmed 320 F.2d 509, pointed out "the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing the goodwill of the possessor." In other words, where the large diversified company makes substantial purchases from many suppliers, these suppliers are going to feel a "reciprocity effect" even without affirmative use of reciprocity by the purchaser.

It has been our position (contrary to that taken by the prior Administration) that conglomerate mergers involving very large firms violate Section 7 of the Clayton Act where (1) significant potential horizontal competition is eliminated; (2) the merger will create reciprocity power which will substantially lessen competition in lines of commerce occupied by either the acquired or the acquiring firm; and (3) where economic concentration and the triggering of further mergers may be anticipated, with effects condemned by Congress when it amended Section 7 of the Clayton Act in 1950.

In the instant case, our interpretation of Section 7 of the Clayton Act is nevertheless consistent with the somewhat narrower interpretation of Section 7 of the Clayton Act held by the prior Administration. Under the Justice Department "Guidelines" issued in May 1968, a rule was set out condemning mergers which create the danger of reciprocal buying (paragraph 19(a)). This guideline is set forth in full in the margin.[1] For present purposes, Canteen is "the selling firm" and ITT is the "buying firm". None of Canteen's competitors is affiliated with an industrial purchaser of anything approaching the size of ITT. We estimate that ITT makes purchases from suppliers accounting for approximately 1/3 of the industrial work force in the nation. Thus these suppliers, employing 1/3 of the work force, certainly account for more than 15% of inplant feeding. The second half of the guideline is satisfied by the fact that ITT would be "both a substantial supplier [of industrial products] and a more substantial buyer than all or most of the competitors of" Canteen. We know of no "special market factor" that makes remote the possibility that reciprocal buying behavior will actually occur.

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[1](a) Since reciprocal buying (i.e., favoring one's customer when making purchases of a product which is sold by the customer) is an economically unjustified business practice which confers a competitive advantage on the favored firm unrelated to the merits of its product, the Department will ordinarily challenge any merger which creates a significant danger of reciprocal buying. Unless it clearly appears that some special market factor makes remote the possibility that reciprocal buying behavior will actually occur, the Department considers that a significant danger of reciprocal buying is present whenever approximately 15% or more of the total purchases in a market in which one of the merging firms ("the selling firm") sells are accounted for by firms which also make substantial sales in markets where the other merging firm ("the buying firm") is both a substantial buyer and a more substantial buyer than all or most of the competitors of the selling firm.

ITT's argument is that it would not engage in active reciprocity; that reciprocity is unlikely in the vending and inplant feeding industries because service is an important element and employees have a substantial voice in the selection of the supplier; and that ITT's purchases from industrial suppliers are a small percentage of the total sales of those suppliers and therefore would not be influential in swinging their vending or inplant feeding purchasing.

The answers to these arguments are as follows. First, the fact that ITT might not aggressively use reciprocity will not eliminate the reciprocity effect, which could influence up to 30% of the business, and even a 6% foreclosure would be an adverse effect condemned by the statute; notwithstanding the service nature of the business and employee voice in selection, we have evidence that reciprocity does play a part in the inplant feeding business; finally, even though ITT as a buyer may account for a small proportion of the sales of a large firm, all other things being equal (price, service, etc.), even $100,000 worth of business per year is a matter of significance and clearly could give Canteen a decisive advantage over competitors who do not have affiliation with a large diversified firm such as ITT. [2]

We should add that, in connection with a specific investigation of reciprocity practices, we have found that reciprocity is particularly widespread, for example, in the steel industry, and that where one important member of an industry begins to use reciprocity, other members are virtually forced to follow suit.

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[2] A survey by *Purchasing Magazine* reveals that reciprocity influences purchasing decisions in large companies (over $50 million) far more frequently than in smaller companies. *Chemical Week Magazine*, in a similar study, also noted that chemical purchasing agents encounter reciprocity pressures only in dealing with large accounts.

In conclusion, we would like to make clear that the opportunity for the operation of reciprocity has been a substantial basis for antitrust challenges to "conglomerate" mergers under Section 7 in at least five cases. One of these—the FTC's case against *Consolidated Foods*—was decided in favor of the Commission by the Supreme Court. Two others—the Department's suits against acquisitions by General Dynamics and Ingersoll Rand—were decided in the Government's favor by the district courts and did not reach the Supreme Court. A fourth case—a suit by the Department against Penick & Ford—is now pending in the district court—while the fifth—the Department's suit against the acquisition of Jones & Laughlin Steel by LTV—was recently filed by the Department. Moreover, the Department's policy of challenging mergers on this basis has been clearly conveyed to the business community in the previous Administration's Merger Guidelines and is well recognized by business and the antitrust bar. We believe that the proposed case against the ITT-Canteen acquisition is squarely within this line of cases.

We find that the Justice Department's action in proceeding against mergers among the very largest companies has been very favorably received by business as well as by Congress and the public at large. We are very concerned that reduced activity along this line will ultimately result in unduly restrictive legislation, and perhaps a Public Utility Holding Company Act "death sentence" provision to undo the concentration which will result from a continuation of the present trend.

Vigorous enforcement of the antitrust laws, including preservation of small and medium-sized business and prevention of undue concentration, is traditional Republican doctrine. Our Section 7 policy is designed to implement that doctrine, and to avoid the dangers to the

economy posed by the current big-company merger movement, as outlined in Mr. McLaren's testimony before the House Ways and Means Committee on March 12, 1969 (copy attached, see pages 10-22). We understand that the Council of Economic Advisers fully supports our Section 7 policy and would strongly favor its continuance.

Accordingly, we urge that the proposed suit against the ITT-Canteen merger be approved, and that we be authorized to negotiate with ITT a "standstill agreement" which would permit the merger to be completed, but would preserve the identity of Canteen, assure a prompt trial, and provide for divestiture in the event that a violation of Section 7 is found.

/s/Richard G. Kleindienst
RICHARD G. KLEINDIENST
Deputy Attorney General

/s/Richard W. McLaren
RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

EXHIBIT D

6.1 JOHN DEAN MEMORANDUM, JULY 20, 1971, WITH ATTACHMENTS

THE WHITE HOUSE
Washington

July 20, 1971

MEMORANDUM FOR: BUD KROGH

FROM: JOHN DEAN

In your work on the Pentagon Papers and related issues you will become aware of the fact that there is a publication out of the Brookings Institute indicating that they are planning for the fall of this year a study of Vietnam based on documents of a current nature. Chuck Colson has made some efforts to determine what Brookings is up to but I don't think he has produced any solid evidence of the nature of this publication. I requested that Caulfield obtain the tax returns of the Brookings Institute to determine if there is anything that we might do by way of turning off money or dealing with principals of the Brookings Institute to determine what they are doing and deal with anything that might be adverse to the Administration.

Attached are copies of these tax returns and you will note that Brookings receives a number of large government contracts. You will also note that on the Board of Trustees there are several people who might be of assistance to us in dealings with the Brookings Institute, e.g., Peter Peterson and H. Chapman Rose.

When we discuss this issue I will also give you some additional background information on the Brookings problem.

EXHIBIT E

5.2 GEORGE BELL MEMORANDUM, JUNE 24, 1971, SSC EXHIBIT NO. 49, 4 SEC 1893-96, WITH ATTACHMENTS

1693

MEMORANDUM

THE WHITE HOUSE
Washington
June 24, 1971 EYES ONLY

MEMORANDUM FOR: JOHN DEAN
JERRY WARREN
VAN SHUMWAY

SUBJECT: OPPONENTS LIST

Attached is the list of opponents which we have compiled. I thought it would be useful to you from time to time.

/s/George T. Bell
George T. Bell

5.2 GEORGE BELL'S OPPONENTS LIST

[1694]

SUBJECT: *OPPONENT PRIORITY ACTIVITY*

Having studied the attached material and evaluated the recommendations for the discussed action, I believe you will find my list worthwhile for go status. It is in priority order.

1. PICKER, ARNOLD M.
   United Artists Corporation
   929 7th Avenue
   New York, N. Y.

   Top Muskie fundraiser. Success here could be both debilitating and very embarrassing to the Muskie machine. If effort looks promising, both Ruth and David Picker should be programmed and then a follow-through with United Artists.

2. BARKAN, ALEXANDER E.
   National Director of AFL-CIO's Committee on Political Education
   Washington, D.C.

   Without a doubt the most powerful political force programmed against us in 1968. ($10 million dollars, 4.6 million votes, 115 million pamphlets, 176,000 workers–all programmed by Barkan's C.O.P.E–So says Teddy White in The Making of the President '68). We can expect the same effort this time.

3. GUTHMAN, ED
   Managing Editor L. A. Times

   Guthman, former Kennedy aide, was a highly sophisticated hatchetman against us in '68. It is obvious he is the prime mover behind the current Key Biscayne effort. It is time to give him the message.

4. DANE, MAXWELL
Doyle, Dane & Bernbach
New York

The top Democratic advertising firm—They destroyed Goldwater in '64. They should be hit hard starting with Dane.

5. CHARLES DYSON
Dyson-Kissner Corporation
New York

Dyson and Larry O'Brien were close business associates after '68. Dyson has huge business holdings and is presently deeply involved in the Businessmen's Educational Fund which bankrolls a national radio network of 5 minute programs—Anti-Nixon in character.

[1695]

6. STEIN, HOWARD
Dreyfus Corporation
New York

Heaviest contributor to Mc Carthy in '68. If McCarthy goes, will do the same in '72. If not, Lindsay or McGovern will receive the funds.

7. LOWENSTEIN, ALLARD
Long Island, New York

Guiding force behind the 18 year old "dump Nixon" vote drive.

8. HALPERIN, MORTON
Leading executive at Common Cause

A scandal would be most helpful here.

9. WOODCOCK, LEONARD
UAW
Detroit, Michigan

No comments necessary

10. S. STERLING MUNRO, JR.
Senator Jackson's AA
711 Lamberton Drive, Silver Spring, Md.

We should give him a try. Positive results would stick a pin in Jackson's white hat.

11. FELD, BERNARD T.
President
Council for a Livable World

Heavy far left funding. They will program an "all court press" against us in '72.

12. DAVIDOFF, SIDNEY
New York City
Lindsay's top personal aide.

A first class S.O.D., wheeler-dealer and suspected bagman. Positive results would really shake the Lindsay camp and Lindsay's plans to capture youth vote. Davidoff in charge.

13. CONYERS, JOHN
Congressman, Detroit

Coming on fast. Emerging as a leading black anti-Nixon spokesman. Has known weakness for white females.

[1696]

14. LAMBERT, SAMUEL M.
President
National Education Association

Has taken us on vis a vis federal aid to parochial schools—a '72 issue.

15. MOTT, STEWART RAWLINGS
Mott Associates
New York

Nothing but big money for radic-lib candidates

16. DELLUMS, RONALD
Congressman, California

Had extensive EMK-Tunney support in his election bid. Success might help in California next year.

17. SCHORR, DANIEL
Columbia Broadcasting System
Washington

A real media enemy.

18. S. HARRISON DOGOLE
2011 Walnut Street
Philadelphia, Pa.

President of Globe Security Systems—Fourth largest private detective agency in U. S. Heavy Humphrey contributor. Could program his agency against us.

19. PAUL NEWMAN
California

Radic-Lib causes. Heavy Mc Carthy involvment '68. Used effectively in nationwide T.V. commercials. '72 involvment certain.

20. MC GRORY, MARY
2710 Macomb Street, Washington
Columnist

Daily hate Nixon articles.

EXHIBIT G

Donation of Personal Papers to
the Richard Nixon Library

The preservation of the papers and other historical materials of the President of the United States, together with the papers of his associates and contemporaries, is authorized by the Presidential Libraries Act of 1955.

Under this act, Presidential libraries have been established for Presidents beginning with Herbert Hoover.

President Nixon has indicated his intention to deposit his papers in a future Richard Nixon Library. It will be administered, like the six operating Presidential libraries, by the General Services Administration through its National Archives and Records Service. Adding the personal papers of the men and women who helped President Nixon shape national policies will give perspective and accuracy to the study and understanding of his administration. To this end, the President has asked Cabinet officers, heads of Government agencies, and key officials under them to deposit their personal papers in the National Archives for the Richard Nixon Library.

In a Presidential library, the papers of an individual, like the papers of the President, are kept intact as separate, named collections. They are in the care of a professional staff of archivists who can give intelligent guidance to those who may wish to use them in the future and provide reference on them as needed by the donor. Donors may place restrictions and conditions on the use of the papers when they execute a deed of gift.

Personal papers of a Government official are the files he has organized and maintained for his own personal use, but they must be distinguished from official records. Federal law defines official records as those preserved by an agency, or appropriate for preservation by an agency, as "evidence of the organization, function, policies, decisions, procedures, operations, or other activities of Government or because of the informational value of data in them" (44 USC 3300). The law requires that certain procedures be followed for the preservation or disposal of official records: they may be disposed of only with the approval of the Administrator of General Services.

Subject to these criteria, personal papers may include all or some of the following:

1. Personal correspondence of the official that does not directly concern the work of his office and that is not intended to be a part of the official records of the office. The correspondence may be with friends, family members, professional or business associates, or other administration officials. It may relate to purely personal interests or to national and State affairs, Government appointments, political campaigns, or other topics. Material in controversy or on personally sensitive matters may be protected by the terms of the deed of gift.

2. Working drafts and notes, used and unused; notebooks.

3. Appointment calendars; logs of telephone calls.

4. Speeches, extra copies; drafts of speeches; related correspondence.

5. Journals, diaries, scrapbooks, and press clippings.

6. Press releases issued by the office, extra copies.

7. Directories or lists of persons and positions in the office.

8. Personal photographs, motion pictures, and sound recordings.

A Government official customarily accumulates extra copies of Government documents for convenience of reference. Many of these are papers that he has drafted, reviewed or otherwise taken action on. They are evidence of his contribution to the agency and its programs. The official may retain such papers provided that they are eligible for disposition under Federal law as extra copies (44 USC 3301), and also provided that the agency records officer raises no objection to their designation as such. Materials classified under Executive

Order 11652 and those defined as "Restricted Data" under the Atomic Energy Act of 1954 must be handled in accordance with the provisions of the Executive order and of the 1954 act, respectively.

Physical objects belonging to the individual that have an association with the President or with the individual's Government service may also be part of an official's personal collection of historical materials.

In donating papers and other historical materials to a Presidential library, officials are reminded that the library contains papers covering the entire career of the President. It is therefore hoped that individuals will donate papers covering their entire careers. The more complete the material, the more dependable it is as historical evidence and the more useful to future historians, biographers, and other researchers.

The great value of personal papers is that when they can be released for scholarly research—a matter for the donor to decide—they provide background information on people, politics, and public issues not to be found in official Government records. For the biographer, they may also contain indispensable information on an individual's civic and business affairs and his family life. When studied in conjunction with official records, personal papers help document the special knowledge, abilities, interests, and characteristics of the men and women who comprise the highest level of Government. A Presidential Library will hold all of this source material in trust, confident that both the Nation and the individual will benefit from the fullest possible documentation of this era.

National Archives and Records Service
General Services Administration
Washington, D C. 20408
November 1972

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

RICHARD NIXON, individually
and as former President of the
United States,

Plaintiff, Civil Action No. 74-1852

v.

Administrator of General
Services, et al.,

Defendants.

Washington, D.C.
Wednesday, July 30, 1975

Deposition of JEANNE DAVIS, called for examination by counsel for the Plaintiff in the above-entitled action, pursuant to notice, the witness being duly sworn by the Notary Public in and for the District of Columbia at the Third Floor Conference Room of the Civil Division, Department of Justice, Washington, D.C., at 9:30 a.m., Wednesday, July 30, 1975, and the proceedings being taken down stenographically by KATHRYN E. MILLS, and transcribed under her direction.

APPEARANCES:

MR. R. STAN MORTENSON, ESQ.

MR. HERBERT J. MILLER, ESQ.
2555 M Street, N.W.
Washington, D.C. 20037
Attorneys for Plaintiff, Richard M. Nixon

MR. SIMON LAZARUS, III, ESQ.
MR. ANDREW S. KRULWICH, ESQ.
1229 - 19th Street, N.W.
Washington, D.C. 20036
Attorney for Intervenor – Defendants
Reporters Committee for Freedom of the Press
American Historical Association
American Political Science Association, et al.

MR. WILLIAM A. DOBROVIR, ESQ.
2005 L Street, N.W.
Washington, D.C. 20036
Attorneys for Intervenor-Defendants,
Jack Anderson, et al.

MR. IRWIN GOLDBLOOM, ESQ.
MR. DAVID J. ANDERSON, ESQ.
Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorneys for Defendants
Administrator of General Services
and United States of America

Witness	Direct	Cross	Redir.	Recross
Jeanne Davis	3	77	81,86	83

EXHIBITS

PLAINTIFF'S:	MARKED
1	3
2	10
3	11
4	11
5	51

[3] PROCEEDINGS

Whereupon,

JEANNE DAVIS
was called as a witness on behalf of the Plaintiff, and after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORTENSON:

Q. Would you state your name and address and position? A. Jeanne Davis, R.R. 1, Box 77, Broadrun, Virginia. I am at present the Staff Secretary of the National Security Council.

Q. I would like to have marked as Plaintiff's Exhibit 1 to the Davis Deposition a copy of a document labeled "Evidence of Jeanne W. Davis" which was submitted to Plaintiff's counsel on Monday morning, July 28th.

(The document referred to was marked Plaintiff's Exhibit Number 1 for identification.)

BY MR. MORTENSON:

Q. I would like you to look at Plaintiff's Exhibit 1 and tell me whether you recognize it as an affidavit which you executed on Friday, July 25, 1975? A. I do.

[4] Q. What time of day did you execute that? A. By "execute" do you mean sign?

Q. Sign, sign the document. A. I don't remember exactly.

Q. Was it in the morning? A. I believe it was in the afternoon. I don't remember exactly.

Q. Was it late in the afternoon? A. I would say mid-afternoon but as I say I don't have a specific recollection.

Q. Apart from discussing or working on this affidavit or the substance of the affidavit with counsel from the Justice Department representing the Government defendants, have you – does this affidavit represent the product solely of your work? A. Some members of my staff assisted in some of the factual information. The final product is my work.

Q. Which members of your staff assisted in the factual aspects of the affidavit? A. Mr. Steven Skancke, Mr. John Murphy.

Q. Are those the only two members of your staff who assisted in the preparation of this affidavit? A. Yes.

Q. What is Mr. Skancke's position? [5] A. Mr. Skancke is an Assistant to me working primarily on declassification and freedom of informati... issues. Mr. Murphy is the Director of the Document Control Section of the Secretariat.

Q. Would you classify both Mr. Skancke and Mr. Murphy as administrative personnel at the NSC staff? A. Yes, I would.

Q. Do either have substantive responsibilities in any area involved with NSC? A. No.

Q. Do you know if your affidavit or any portion thereof was reviewed by any other member of the White House or any member of the NSC staff? A. Yes, by General Brent Scowcroft. It was also reviewed by Mr. William Casselman.

Q. Do you know whether Mr. Buchen reviewed your affidavit? A. No, I do not.

Q. Do you know whether Mr. Sonnenfeldt reviewed your affidavit? A. No, sir.

Q. What about Mr. Eagleburger? A. No, sir.

Q. Did Mr. Kissinger discuss your affidavit with you? [6] A. No.

Q. Do you know whether he reviewed it? A. I do not know.

Q. Apart from General Scowcroft, you know of no other senior NSC staff member who reviewed your affidavit? A. I do not.

Q. Did you discuss in the preparation of your affidavit the substance thereof with either General Scowcroft or any senior NSC staff member? A. No, not during the preparation.

Q. Yesterday, when you received word that Plaintiff's counsel had requested your deposition, what steps did you take in connection with the preparation for this deposition? A. I was informed by the Justice Department by telephone yesterday. I asked for some statistical material from people in our secretariat. I discussed the matter with Justice Department attorneys and interviewed some of my people who had prepared these statistics to be sure that I understood.

Q. Which people did you interview? A. I discussed it with Mr. Skancke, with Mr. Murphy, with Lt. Col. McFarland and with Mr. Roberts, Ed Roberts.

Q. Did you discuss with Mr. — A. I am sorry. Ms. Kathryn Troia also.

[7] Q. Did you discuss the deposition with Mr. Buchen or Mr. Casselman or any member of their staffs? A. I did not discuss it with Mr. Buchen. Mr. Casselman was present yesterday when I discussed it with the Justice Department Attorneys.

Q. What is Lt. Col. McFarland's position? A. He is a general assistant in the Office of General Scowcroft.

Q. Mr. Roberts? A. He is an NSC employe in charge of the Presidential files maintained in the west basement of the White House.

Q. When you say that he is in charge of the Presidential files in the west basement of the White House are you talking about NSC related Presidential files? A. Yes. I am talking about the files maintained by NSC personnel but are considered Presidential files.

Q. What is Kathryn Troia's position? A. She is an assistant in the office of Mr. Kissinger in the White House. She also works on files.

Q. When you say she is an assistant to Dr. Kissinger is she an administrative assistant? A. She is a staff assistant and works primarily on the file material.

[8] Q. Does she carry secretarial responsibilities? A. Secretarial?

Q. Yes. A. No.

Q. Who is Dr. Kissinger's secretary? A. He has several. Irene Derus is one. Do you mean the secretaries in his immediate office who serve both him and General Scowcroft?

Q. Yes. A. Mrs. Lora Simkus, Mary Stifflemire, Mrs. Florence — I can't remember her last name. There are other secretaries who come in in the evening to man the office. I do not recall all their names.

Q. The three women you named and the fourth whose last name you could not remember, to whom do they report? A. To Mr. Kissinger or to General Scowcroft who is his Deputy.

Q. To anyone else? A. No.

Q. In preparing for this depositin today, you said that you requested some statistical information. What materials did you bring with you to the deposition? A. The list of examples of occasions to have access to [9] material from Presidential libraries, previous presidents, some figures on the number of boxes of material both originals and copies of NSC and Presidential material that have been retired to the special vault where President Nixon's materials are maintained.

Q. May I see those, please? A. Yes.

Q. Did you bring any other material with you to the deposition? A. No, except for a document here on which that is based.

Q. Is this the document you provided to counsel for

Plaintiff prior to the commencement of the deposition? A. Yes.

Q. Would you identify it? A. It is a log of access by NSC staff employees to the vault on the 2nd floor where President Nixon's material is kept.

Q. And you say you brought in addition with that log a summary or explanation of what is contained in the log? A. No.

Q. What are you holding in your hand? A. This was a backup document for the preparation of this.

[10] Q. May I see that, please?

MR. ANDERSON: Why don't you try to identify the documents. All we have to go on is the control record.

THE WITNESS: All right. This is a memorandum prepared by Mr. Murphy for me for this deposition which gives figures on the number of times that we have had reason to request material – I am sorry. Which we have been asked by the National Archives to review material obtained from the Presidential Libraries of Presidents Johnson, Kennedy, Eisenhower and Truman for purposes of mandatory review, declassification and release.

MR. GOLDBLOOM: It might be helpful if you had those documents marked in connection with the actual description.

MR. MORTENSON: We would like to introduce for the record at this time Plaintiff's Exhibit 2 to the Davis deposition which Mrs. Davis has described as a log or record of access, withdrawal and copying of documents from Nixon Administration records in Room 205EOB.

(The document referred to was marked Plaintiff's Exhibit Number 2 for identification.)

MR. MORTENSON: We would like to introduce as Plaintiff's Exhibit 3 to the Davis deposition a summary prepared [11] for Mrs. Davis describing access to Presidential Library materials. The document is dated July 30, 1975.

(The document referred to was marked Plaintiff's Exhibit Number 3 for identification.)

MR. MORTENSON: We would like marked as Defendant's Exhibit 4 the memorandum prepared for Mrs. Davis dated July 30, 1975, entitled "Subject: Request for Evaluation of Documents from the Presidential Libraries."

(The document referred to was marked Plaintiff's Exhibit Number 4 for identification.)

MR. MORTENSON: I plan to ask a series of questions on those documents. Do you want to get some copies made?

MR. GOLDBLOOM: Yes.

MR. MORTENSON: We will take a short recess while copies are made.

(Brief recess.)

MR. MORTENSON: Back on the record.

BY MR' MORTENSON:

Q. Mrs. Davis, Plaintiff's Exhibit Number 2 which you have described as a log for access to the Nixon materials contains a number of entries. Could you, starting with the first entry, [12] in terms of chronology, the earliest chronological entry, state for us what the nature of the entry was and the purpose for that entry? A. May I say that before I do that, in many cases I will not have personal knowledge of these entries. They were made by people other than myself. I can describe what I know about the material contained in these citations.

Q. In your affidavit you say you are in charge of the maintenance of the official NSC files. That does not entail, I take it, the actual supervision of who goes in and comes out of NSC files or the purposes for that entry. A. I personally am not responsible for that, no.

Q. Can you give us your best information on each of these? A. Yes. The first I think is self-evident, a malfunction of the room alarm.

Q. Which page of this document is that and what is the entry date? A. That is November 11, 1974.

Q. Please describe that? A. These pages are out of order. That is correct. November 11, 1974, time in 16:12, time out 16:18, person having access, Mr. Ed Roberts.

[13] NSC staff. The purpose was malfunction of the room alarm. The technical security division office checking is the notation.

Q. So that we can facilitate the review of this, could we mark Plaintiff's Exhibit Number 2 and the page you are referring to as page 1?

Going to the second entry, would you describe the stated purpose for that entry?

A. Of my own personal knowledge, I cannot describe why they specifically wanted the dinner guest list from the visit of Prime Minister Trudeau which is the item requested.

Q. Do you know in the final column of that entry what the entry states? A. Checked by phone with NSC document.

Q. So your testimony is that you have no basis for knowing whether or not that entry into the Nixon Presidential files of the NSC was for anything related to the national security or foreign policy of the United States? A. From my personal knowledge, no, I would not. I would have no knowledge.

Q. Would Mr. Roberts have knowledge of that? A. It is possible.

Q. Would you move to the next entry on page 1? [14] A. Entry dated November 16, 1974, time in 17:36 time out 17:43. The entrant, Mr. Roberts of NSC, the item Vietnam material for trip Japan, Korea, USSR; it was shown to Rodman, Peter Rodman, Mr. Kissinger's staff, and returned.

Q. Do you know what particular file that was? A. No, I do not.

Q. Do you know how many files that was? A. No.

Q. Would you describe for me what the material was in the next entry which says CD material looked at? A. CD is an abbreviation for Camp David. Much of our Vietnam material is contained in files described as the Camp David file. References to CD refer to Vietnam material maintained in this file which is entitled "Camp David File."

Q. Do you have any basis for knowing what the material retrieved from the Camp David file consisted of? A. No.

Q. Do you have any basis for knowing what the Vietnam material referred to in the previous entry consisted of? A. No.

Q. The next entry says placed 30 boxes of files in vault. Does that indicate to you that no material was removed or viewed? [15] A. Yes, it does.

Q. The next entry under the column labeled what says 1969 papers on Thailand. Do you know what was written under that? A. Ernest May study, and TS stands for top secret.

Q. The entry under action is what? A. Van Eron, a member of the document control staff and the entry is not the report we were looking for.

Q. Do you know what the top secret study was that Mr. Ernest May was working on? A. Yes, I do.

Q. Do you know what report it was that he was looking for? A. Yes, I do.

Q. Was that report subsequently found? A. The first half of the report was found.

Q. Where was that found? A. In the [NSC maintaned files in the west basement of the White House] files of the Program Analysis Section of the NSC Staff.

Q. Is that in the institutional files? A. No, sir.

Q. That is a separate filing system? A. This is the file which I have described in my affidavit of Presidential

material, not institutional material, [16] which is maintained by NSC personnel in the west basement of the White House.

Q. Was this among the Ford Presidential materials? A. No, sir.

Q. This was among the Nixon Presidential material in the west basement of the White House? A. Yes.

Q. So your testimony is that all of the Nixon Presidential material is not in the vault adjoining room 205 of the Old DOB? A. All of the material, the originals and the copies of material with the exception of the material which I have described, some material which I have described in the four general subjects of my affidavit is now, so far as I am aware, in the vault housing Mr. Nixon's papers.

It took some period of time in the months, early months, to identify and move all of the material into that vault. There was a period of time when this movement was taking place where some of the materials were still maintained in this basement.

Q. As of November 26, 1974, the report Mr. Ernest May was looking for which was considered a Nixon Presidential material had not been stored with the Nixon Presidential materials in the [17] vault? A. That is my recollection. May I describe a little bit the nature of this request which may help explain?

Q. Please do so. A. The request for declassification of this study came to us from the Murphy Commission, the Commission which was studying the organization of the Executive Branch in the area of foreign policy.

They asked us to review for declassification a study which had been prepared for the NSC by Dr. Ernest May in 1969 on Thailand. They wanted Dr. May to use this in preparing a case study for the Murphy Commission.

We searched our own files and located what we thought was the document. Dr. May came down to review it. When he reviewed it, he told us that this was only

a part of the full study and that there was an additional portion of the study.

It was that additional portion which we were looking for when we went into the vault in November of 1974.

Q. And which you found in the Nixon presidential materials still in the west basement of the White House? A. Is it still in the west basement of the White House?

Q. That is the portion of the report you found? A. Was at that time in the west basement of the White [18] House. It was subsequently moved into the vault.

Q. Part of Mr. May's study was in the institutional files and part was in the Presidential files? A. No, sir. The part – we never did find the second part of Mr. May's study. The part we found at the time we located it was in our own files. However, subsequent to that, it was moved into the vault.

Q. Now, you described, I believe, the Ernest May study as a report or a study prepared for the NSC Council? A. Prepared at the request of the program analysis section of the NSC staff.

Q. All right. Now in your affidavit in describing the institutional files in paragraph 5, you state that the institutional files contain all the reports and recommendations prepared for the Council. Was this not, then, a report or a recommendation prepared for the Council? A. It was prepared for the council staff.

Q. What is the difference between the –

MR. ANDERSON: Can the witness answer the question?

THE WITNESS: It was prepared for the council staff.

BY MR. MORTENSON:

Q. And reports and recommendations prepared for the council staff are not included in the institutional files. [19] A. They should be included in the institutional files, yes.

Q. Then is it your testimony that this study prepared

by Ernest May was improperly filed in the first instance? A. I just am not sure.

Q. If you were filing or instructing a member of your staff to file Mr. Ernest May's study at this point would you include it in the institutional files or in the Ford Presidential files? A. In the institutional files.

Q. Can you describe the entry under the what column listed 12-17-74? A. Placed 50 boxes of files in vault.

Q. From that entry would you – would that indicate to you that there was no entry on that occasion to review documents? A. That would be my assumption.

Q. Would the same be true of the entry below that labeled 1-2-75? A. Yes.

Q. Would the same be true as the next entry labeled 1-2-75? A. Yes.

[20] Q. Moving to page 2 of the report with the first entry being 2-7-75, do you have any information pertaining to the meaning of the entry under the what column for that date labeled HAK trip folder, something, and December, 1972? A. HAK are Mr. Kissinger's initials.

Q. Do you know what trip that was? A. No.

Q. Do you know why that document was removed? A. No, I do not.

Q. Do you know what type of materials would be contained in that folder? A. I do not know what is in this specific folder. I can tell you that the trip folders normally contain the briefing material prepared for the conversations on the trip and they often contain memoranda of conversations, meetings on the trip.

I do not know in this specific case.

Q. The next entry says K. Troia and under the what column says nothing. Do you know what that represents? A. I do not.

Q. The next entry under the what column states Intel Memo for Mrs. Davis. Do you know what that involved? A. That was a memorandum that Mr. Roberts was obtain-

ing [21] for me. I am sorry. At this point I do not recall what it was.

Q. Do you recall whether it had to do with anything dealing with foreign policy? A. I just do not recall the specific memorandum.

Q. The next entry under that in the what column says Nixon letter to President Thieu, all of which is scored through and then President-Cor.-VN. Do you know what that entry is? A. Yes, sir. That was the request, as indicated in the action column by General Scowcroft to see all of the Presidential correspondence having to do with Vietnam.

Q. Do you know the basis for Mr. Scowcroft's request? A. No, I do not, specifically.

Q. You have no knowledge of why he wanted to see the Presidential correspondence on Vietnam? A. I have no specific knowledge.

Q. The next entry says CD October-December, 1972. Do you know what that entry involved? A. CD refers to the Camp David file which is the file of material on Vietnam.

Q. The next entry says CD files for Rodman. Do you know what that entry involved? A. Camp David files. Mr. Rodman is a member of Mr. Kissinger's staff.

[22] Q. Do you know why Mr. Rodman needed access to those files? A. No.

Q. The next entry says return correspondence VN take large safe to WH office. A. The Presidential correspondence being returned was the correspondence which had been pulled earlier for General Scowcroft. The large safe referred to was an empty safe which was moved from the vault.

Q. What was the date on which the Presidential Vietnam file was removed from Mr. Scowcroft and then returned? A. The file was removed on April 4th and was returned on April 9th.

Q. The next entry says check alarm and the entry under that says installing alarm. Have you had some alarm problems? A. We have.

Q. The next entry is checking files and the person listed is Kathryn Troia. Do you know what that entry involved? A. I do not.

Q. Do you have any basis for knowing whether it involved security or national foreign policy? A. I do not.

Q. The next entry on page 3 lists under the what column [23] checked files for accurate classification. Do you know what that involved? A. Yes, I do. As I have described in paragraph 16 of my affidavit, we have been reviewing some of the original documents in those files to determine that they were properly marked with the declassification category, either what we call the GDS, general declassification schedule or XGDS, exempt from the general declassification Schedule. These are schedules which were set out in Executive Order 11652.

We have been going through some of the material to be sure it was properly marked.

Q. Has that review been completed? A. I don't know.

Q. There are three separate entries by Kathryn Troia which appear to be for purposes of checking files for accurate classifications, is that correct? A. From the log, yes.

Q. During that checking for accurate classification were documents that were not previously classified, classified? A. Not to my knowledge. I don't know.

Q. Do you know whether there were any that were classified that were upgraded in classification? A. Not to my knowledge.

[24] Q. Do you review or assist Kathryn Troia in this work? A. No.

Q. To your personal knowledge, you don't know what Kathryn Troia did while she checked the files for classification? A. No.

Q. Who informed you that you have been required to review the original documents to determine whether they were properly classified and properly marked with the classification and exempt categories pursuant to Executive Order 11652 you have discovered documents which are not currently classified as marked you will add the requisite classification. A. Mr. Murphy.

Q. Does the sentence in your affidavit in paragraph 16 which starts when we have discovered documents which were not correctly classified, or marked, does that sentence imply to you that documents have been classified which were not previously classified or correctly classified? A. Not specifically. Correctly classified could mean that only the first page was marked and subsequent pages were not marked. It could mean such things as that.

Q. To your knowledge, you don't know whether documents were upgraded in classification or downgraded in classification? A. I do not, no.

[25] Q. When you refer to the we, is that a rhetorical we in that you had no control in this activity? A. That is correct.

Q. The next entry by Kathryn Troia checks DC file. Do you know anything about that entry? A. No.

Q. The next entry is labeled seven SALT files for memo by KW Smith of unknown date. The action column is not found. Do you know what the basis of that access was? A. I do not.

Q. Do you know whether that document was subsequently found? A. I do not.

Q. The next entry says checked back channel file for dates. Nothing removed. Do you know what that involved? A. No.

Q. Do you know whether that entry involved national security or foreign policy? A. I do not.

Q. The next says checked for a 1969 memo for HAK office. The action is nothing removed. Do you know what

the basis was for that entry? A. I do not.

[26] Q. Do you know whether it was for foreign policy or national security? A. I do not.

Q. The next entry is check VN file for date. Nothing removed. Do you know the base for that? A. No.

Q. The next one is attempt to identify paper requested by Church Committee. Nothing removed. Do you know the basis for that entry? A. I do not specifically.

Q. Do you know whether it involved national security or foreign policy? A. I do not know specifically except that the Church Committee activities, the nature of the Church Committee documents, and the documents that they have been requested all contained elements of foreign policy.

Q. Has the committee – has the NSC provided any Presidential files of the Ford Administration to the Church Committee as opposed to the institutional files? A. I don't know.

Q. Do you know whether any institutional files of the Ford Administration, NSC, have been provided to the Church Committee?

[27] MR. ANDERSON: I think – I want to be sure I understand that question.

Institutional files do not necessarily belong to any administration.

MR. MORTENSON: I am talking about institutional files of the NSC contemporaneous with the Ford Administration.

THE WITNESS: I do not believe so. I would have to do specific checking.

BY MR. MORTENSON:

Q. Would the production of any such document be handled through you? A. Ultimately, no. It would be the Office of the White House Counsel.

Q. Is it fair to say that persons have access to the vault containing the Nixon Presidential NSC files without checking with you before going in or coming out? A. Are you speaking of persons on the NSC staff?

Q. Yes. A. NSC staff personnel have – do not have to check with me before going in and out of the vault. However, there is a very limited number of people who have the combination of the vault.

Q. The next entry lists CD files for Rodman – I am sorry.

[28] I have moved to the wrong page. Strike that question. The final entry on page 3 lists additional copies of NSC materials for Nixon files and the last portion of that entry is obliterated. Do you know what that last portion is? A. I can't read it.

Q. Do you know the basis for that entry? A. I believe I am correct in saying that this was the period at which we moved into the vault copies of Nixon material. We had moved all the originals into the vault first and we subsequently began to round up copies of the Presidential material of that period and move the copies into the vault as well.

I am pretty sure that is what this entry refers to.

Q. When you talk of "we" who was involved in that process? A. The entire staff was involved in identifying copies of materials which might have been retained in various locations. The people who actually pulled it together and made the transfer were the people in the document control section, in the secretariat and also Mr. Roberts in the files of the west basement.

Q. Why were the copies rounded up from the various NSC staff members files or other files to be placed among the [29] Nixon files? A. To be sure that we were in compliance with the court order for the sequestering of those files.

Q. Turning to page 4, the first entry under the what column says to pull NSC material inadvertently committed to Nixon records. Do you know the basis for that entry? A. I do not know the specific material. I do know that at one point we identified some institutional material that had been mistakenly transferred into the presidential vault. We removed the institutional material. I do not recall specifically what the material was.

Q. Do you see that being done? A. I did not.

Q. Did you talk with Mr. Roberts whose name appears in the who column about that? A. Not directly, no.

Q. Do you know what institutional files he removed? A. I do not know that, no.

Q. Do you know whether that was related to anything dealing with foreign policy? A. I –

Q. The removal itself? A. I am not sure I understand your question.

[30] Q. Do you know whether in Mr. Roberts going into that file and going into the vault and removing those files, whether it was done at the request of anyone who needed those materials for a matter dealing with foreign policy? A. I do not know that specifically.

Q. Next five folders of background messages to be removed by Rodman. A. Yes.

Q. Do you know what that entry involved? A. No, I do not.

MR. KRULWICH: Is that background or back channel?

MR. MORTENSON: Back channel.

BY MR. MORTENSON:

Q. The next entry said check FOIA request-NSC. Do you know the basis of that entry? A. No, except as it appears here. The numbers indicated are the log numbers, NSC log numbers of specific items.

Q. Would you describe what NSC log numbers of

specific items means? A. We have a logging system in our secretariat. When material comes to the NSC for staffing, it is logged, assigned a number, action is assigned to an individual and information and action copies are distributed. From that time, that incoming letter [31] or whatever it is and the documents that are prepared in response to it all bear that same number. This is a matter of file identification.

Q. Is that file number then, computerized? A. Yes.

Q. Would an incoming letter from a head of state to Dr. Kissinger receive a file number? A. Under normal circumstances, yes.

Q. And informational copies would be distributed? A. It would depend on the nature of the item. If it were a very, very sensitive item, it might be handled in a very sensitive, very limited way.

If it were a normal item, it would come in, receive a log number, and original or a copy would go immediately to Mr. Kissinger and depending on his views, action would be assigned, possibly to a member of our staff, possibly to a member of State to prepare a reply.

Q. The distribution of an informational copy would be dictated by the necessity of additional people knowing by that communication? A. Yes.

Q. Would the same be true of correspondence that comes to the President dealing with national security or foreign [32] policy matters? A. Correspondence coming to the President if it were to be staffed through the NSC would receive the same treatment with the understanding that particularly sensitive documents would be very limited.

Q. If you went to the computer and informed the computer you were looking for the document containing the identification 20313, would you receive from the computer a list of the documents bearing that number? A. We would receive an identification of the nature of the

document and we would receive a history of the action taken on the document, to whom it was assigned for action, at what time action was taken, and so forth.

Q. Are these computer records part of the NSC institutional files? A. It is hard to say. To the extent that they relate to material that is in the institutuional files, I would say yes, they are. However, the secretariat and the staff support Mr. Kissinger both in his institutional role and his noninstitutional rule as an assistant to the president.

So that to the extent that the computer records pertain to the institutional materials, they would be part of the institutional file. To the extent they do not, I would not be [33] sure.

Q. You said though that materials which would be considered part of the presidential files of the NSC would receive the same sort of computer identification? A. Yes.

Q. So that mixed into the computer, if you punched in the number 20313, you would get back documents containing that number, whether it was originally found in the institutional or the presidential file? A. Yes. However, one of the entries is whether or not it is to be filed in the presidential file or the institutional file.

Q. Did the computer system exist before the Nixon Administration? A. No.

Q. Was this something that came about during the Nixon administration? A. Yes.

Q. In complying with the court order concerning segregation of the Nixon Presidential materials, has any portion of this computer record been stored with the Nixon Presidential materials? A. I believe so, but I do not know for sure.

[34] Q. Is that a copy of the computer record? A. I am not sure.

Q. Who operates the computer or maintains it? A. Let me be sure I understand you. Do you mean who accesses

the computer from our staff?

Q. Yes. A. The overall control is in the document control section of the secretariat, NSC secretariat.

Q. Who maintains the computer? A. It is maintained by the White House communications agency. The technical staff.

Q. If the Nixon Presidential materials presently in the vault were in some other location and Mr. Roberts in checking with this FOIA request had gone to the identification number 20313 would the computer have told him where documents related to that number should be found? A. Once the item is completed, the computer would have shown him where the documents were to be found.

Q. Were all the documents in the NSC's institutional file containing an NSC computer number? A. Yes, I believe so.

Q. Would all the documents in the Presidential files, NSC files, contain a computer identification number? [35] A. All of those which have been handled by the NSC system in the normal manner. Some sensitive things are receiving limited treatment.

Q. What type of material would get into the Presidential NSC files that would not receive a computer number for identification purposes? A. Although this is not a specific example, I can see where a particularly sensitive exchange of correspondence between a president and a head of state which did not involve any NSC institutional problem would not have a computer number on it.

It might have been handled immediately by the President or Mr. Kissinger.

Q. What type of problem would you classify as not involving an NSC institutional matter? A. An exchange of correspondence between heads of state on a particular foreign policy issue or one that has not been through the normal NSC system. I described some of this type of

information when I described the material that is maintained in the Presidential files by the NSC people as opposed to the NSC institution files.

Q. To try to get an example, if Mr. Brezhnev were to send President Ford a letter dealing with the sale of wheat [36] to Russia and if President Ford considered what a sensitive item of correspondence, might that letter wind up in the NSC Presidential files and not be given an identification number? A. It is possible that it would not receive an NSC number similar to these computer numbers. There is a system for identifying some of this extremely sensitive material with which I am not familiar.

Q. Who would be familiar with that? A. Mr. Roberts probably.

Q. Would you know in the example I have just given whether Dr. Kissinger would receive a copy of that communication? A. It would seem he would.

Q. Do you know where he would maintain that? A. I don't know for sure. It is possible he would maintain it at least temporarily in his own office. I would expect – well, I don't know.

Q. Does Dr. Kissinger maintain a set of files in his own office which you have no access or supervision over? A. Yes, he maintains certain things in his immediate office.

Q. Do you know what those certain things are? A. No.

Q. If Dr. Kissinger receives a particular document [37] and requests his secretarial staff to maintain it in his files, is it possible that you would not become aware of that document or indeed other people in the NSC not become aware of that document until Dr. Kissinger determined to place it in the NSC filing system? A. It is possible.

Q. The next entry on page 4 lists organized files under the what column and nothing removed. Do you know what the basis was of that entry? A. Not specifically, no.

Q. The next entry says box number 2 of China material for review by Troia. Do you know what the basis for that entry was? A. Not specifically.

Q. Do you know generally? A. No.

Q. Did you discuss this with Mrs. Troia? A. No.

Q. Do you know whether or not it had to do with a particular matter of national security or foreign policy? A. Not specifically, no.

Q. The next entry says organized files, nothing removed. Do you know the basis for that entry? [38] A. No.

Q. What is an FOIA? A. The letters stand for Freedom of Information Act. We have received a flood of requests for declassification and release of classified material. This has been one of the main reasons that we have gone into various Presidential files to identify such material and review it in response to requests.

Q. Has this flood of FOIA requests concerned the NSC staff? A. To what extent?

Q. Concerned the staff as to required disclosure of NSC documents? A. We have reviewed each case on its merits and in some cases we have determined that they should not be declassified and released. To that extent, yes, it has been a concern to us.

Q. As a general matter, the fact that there has been under the new statute a flood of FOIA requests concerned even some members of the NSC staff? A. Are you talking in general terms, the fact –

Q. Yes. A. Yes, it is of general concern that we are being asked to declassify.

[39] Q. Why is that? A. Because many of these foreign policy and national security issues are extremely sensitive. Many of them involve our relations with other countries. Many of them involve information we have received from other countries.

Under the various exemptions categories of the Freedom of Information Act we have determined that much

of this material is exempt from declassification and release.

Q. Has there been a determination whether or not the portions of the NSC files considered as Ford administration files are subject to requests under the Freedom of Information Act? A. It is my understanding – no, to my knowledge there has not been such a determination.

Q. Is it fair to say that the entries which indicate the review of the Nixon Presidential materials for purposes of classification which you have described generally arises in part from this concern you described about the FOIA requests? A. To the extent, yes, to some extent.

Q. Having gone through each of the entries in the Plaintiff's Exhibit 2, can you state that this represents each access by NSC staff members to the Nixon presidential materials? A. I cannot verify of my personal knowledge that this [40] represents each access. The purpose of this log, however, was to record each access. I have no reason to believe that there are others, nor can I verify that these are the only ones.

Q. So that I don't mischaracterize your testimony in trying to summarize this document, would you once again review it and tell me whether from your personal knowledge or discussions with people whose names are listed for the access, do you know of any of these instances in which the access involves requests dealing with national security or foreign policy? A. From my own personal knowledge, since I was not involved personally in these file searches, I cannot say. However, I should qualify that by saying that the descriptions of some of the material in the what column would indicate to me that certain of these entries were made for such purposes.

Q. Would that be true of the item on page 1 which lists PM Trudeau dinner book guest lists? A. The fact that this was a guest list for a dinner would indicate that it was a non-substantive request.

Q. In preparing your affidavit, and discussing the preparation thereof with Mr. Skancke and Mr. Murphy, did either of these gentlemen tell you that of their own personal knowledge they knew the basis for any of these accesses? A. No.

[41] Q. Is it fair to say that your statement in paragraph 10 of the affidavit – in clearing out current government business it has been necessary to review certain papers of the Nixon Administration contained in the Room 207 of the Old Executive Office Building?

You made that statement based upon your judgment of the descriptions contained on access request list and not based upon your discussions with persons other than Mr. Murphy and Mr. Skancke?

A. Let me be sure I understand. Could I have the question, again, please?

(The record was read by the Reporter.)

THE WITNESS: I made this statement based in part on the descriptions of the material requested from the log. In addition because I have had occasions in connection with my own business to – my own institutional business – to request material from various files, I know that file searches have been done at various places.

Some of this material, although I may not know specifically the reason for the entry on a particular day at a particular time, I have a general knowledge of the substance of the ongoing work, –

Q. There is only one request listed under the what column [42] which mentions your name, is that accurate? A. That is correct.

Q. Is it accurate that you do not recall what the purpose of that was? A. Not specifically.

Q. Do you recall generally? A. No.

Q. Do you recall any other instance in which you have requested or received information that you were told came from the Nixon Presidential files? A. I cannot at

this moment recall a specific instance, although I – I cannot so cite a specific instance but when you say Presidential files, you mean President Nixon?

Q. Yes. A. I cannot recall a specific instance. However, I am – it might be possible to check the record. I do not recall such an instance now.

Q. Do you recall a specific instance when you made the statement contained in the first sentence, paragraph 10 of your affidavit? A. I – did I recall a specific instance not directly related to the log?

Q. Did you recall any specific instance requiring [43] the current government business necessity of review of the Nixon NSC Presidential materials?

MR. KRULWICH: May I have that question read back?

(The record was read by the Reporter.)

THE WITNESS: I recall a request for a Church Committee –

MR. GOLDBLOOM: I am going to object to that question because I am not sure I understand it. The witness has been testifying extensively about an access sheet concerning access to President Nixon's materials. As I understand this question, is that designed to encompass all of the access items listed on that sheet or is it to be in addition to them?

MR. MORTENSON: The question is designed to get at the basis for Mrs. Davis' statement that in carrying out current government business it has been necessary to review certain papers of the Nixon Administration contained in the vault in Room 207 of the Old Executive Office Building.

I believe it is fair to characterize her testimony as having no knowledge of any of the entries except the Church Committee report.

MR. GOLDBLOOM: I don't accept that characterization.

MR. MORTENSON: That is what I am asking so I don't mischaracterize.

[44] MR. GOLDBLOOM: That is a mischaracterization. Many of the access items bear on their face a clear explanation or identification of subject matter which relates to national security or foreign policy. I know we may quibble with whether or not the witness knows precisely the information being sought after by the access, but I think the subject matter of the access incident under the what column is quite self-evident.

BY MR. MORTENSON:

Q. Let me return then to page 2, –

MR. GOLDBLOOM: I am also puzzled by the request. Are you asking the witness about the specific examples listed in paragraphs that follow paragraph 10 which seem to be specific examples of the kind of thing that you are asking about?

MR. MORTENSON: No. I will restate my question. Rather I will state another question in its place.

BY MR. MORTENSON:

Q. On page 2 of Plaintiff's Exhibit 2, the first entry was HAK trip folder October-December 1972. Do you recall whether your testimony was that you did not know the basis for that access? A. I do not know the basis for that specific access, no.

Q. Do you know whether it related to foreign policy or [45] national security needs? A. Since I don't know the basis for the specific access, I could not characterize it except to say that a trip abroad by the assistant to the president for national security affairs, I would think would almost have to relate to foreign policy or national security matters.

Q. Do you know whether Mr. Rodman's pulling the file labeled HAK trip folder October-December, 1972,

was in connection with a trip abroad? A. I do not know specifically.

Q. So then you do not know on that entry whether it pertained to national security and foreign policy needs? A. I personally do not know.

Q. All right. Is there any entry on Plaintiff's Exhibit 2 which you know the basis for the entry apart from the Church Committee entry? A. Again let me clarify. Where I specifically know what document was being sought and for what specific purpose over and above the review of it in the formal work of the – of Mr. Kissinger's office? Is that your question?

Q. Other than your judgment other intuitions as to why a particular document might be – might have been pulled, do you know specifically where any of these entries were made [46] and why the documents sought were being searched for? A. As I mentioned earlier, I do have specific knowledge of the search for the 1969 study on Thailand. I was personally involved in that. I do have specific knowledge of the Church Committee requests although in this particular log entry an attempt to identify paper requested by Church Committee, I don't know what that specific purpose was. But I do have knowledge of the Church Committee requests.

I do have knowledge of the FOIA requests. Here again the specific log numbers, I have not looked up.

Q. Do you consider the FOIA requests as pertaining to NSC needs for national security or foreign policy affairs? A. To the extent that the material being requested is material of a foreign policy or national security nature, yes, I do.

Q. Were those searches for in connection with NSC needs other than the decision process on making them available pursuant to the FOIA request? A. This entry would indicate that they were searched for for the specific reason of responding to the FOIA request.

Q. Is it fair to say that the example of NSC needs or access for – for access to the Nixon Administration material which is not in your affidavit at paragraph 10 limited to [47] Presidential as opposed to institutional material needs thought perhaps to arise in the future and not examples of what has occurred in the past? A. Could you read that back, please?

(The record was read by the Reporter.)

MR. GOLDBLOOM: I object to the form of the question. I think it ought to be restated. I am not sure I understand it.

BY MR. MORTENSON:

Q. Are the examples in your affidavit as pages 11, 12, 13, 14, examples of needs that may arise in the future as opposed to examples of those occasions that have negated NSC access to date? A. I would say they are both.

Q. Which are both? A. The examples in paragraphs 11, 12, 13 and 14, the need for material in these categories has occasioned our keeping copies of certain of the President Nixon materials, making copies and keeping those copies in the west basement. We have referred regularly to those copies and we would anticipate doing so in the future.

Q. Do you know what copies there are of Nixon presidential materials in the west basement? [48] A. The materials that I have described generally in these four paragraphs, materials on those four subjects. I know, for example, that there are copies of the briefing books prepared for the president's trips, some of Mr. Kissinger's trips and copies of some of the memoranda of conversations which took place on those trips.

The originals of those have been moved into the vault in room 207 but as I have indicated in here, we have maintained copies of some of this material.

Q. So the entry on Plaintiff's Exhibit 2 which we talked about I believe on page 3 stating additional copies of NSC materials for Nixon's files, that does not, then, indicate that all of the copies of Nixon presidential files are in the vault? A. As I have described in paragraph 15 of my affidavit, I have said we have retained copies of a limited number of those documents most often required in the White House office to be of assistance to the President.

It is those documents which I had described, I am describing. Those documents pertain to these four subjects.

Q. Do you know from your own knowledge or your discussions with Mr. Skancke the occasions you have had to review the Nixon Presidential files in connection with the Arab Israeli [49] dispute and the attempts to bring about a lasting peace in the Middle East? A. I would not know from his conversations with those two gentlemen. These documents I mentioned are maintained in the White House Offices of Mr. Kissinger. they are maintained by his immediate staff. I do know from conversations with them over a period of time that he has used that material out of those files.

Q. Is that segregated from his own files? A. Yes.

Q. And when did you discuss this with his secretarial staff? A. With his secretarial staff?

Q. Yes. A. This particular question?

Q. His gaining access to the Nixon Presidential files that are maintained over in the west wing of the White House? A. I have not discussed this with his secretarial staff. Under the normal circumstances, this material would be identified and obtained for him by either Mr. Rodman or Miss Troia.

Q. You have discussed this with them? [50] A. Not with Mr. Rodman recently although I have discussed it with Mr. Rodman in the past when we have been engaged

in searches for material. It discussed it with Miss Troia to confirm my understanding of what was in those files.

Q. Is it fair to say that your statement in paragraph 10 about the government, current government business negating access to Nixon Administration materials maintained in the vault in room 207 does not go to paragraphs 11, 12, 13 and 14, which you have described as being occasions in which people have had access to the copies maintained outside the vault? A. One of the reasons for maintaining the copies of some of this material at the time the originals were moved into the vault was based on the fact that we had had occasion to go into the originals of this material on several occasions during the period before the formal physical transfer of all the originals actually took place.

We made copies of that material which we had experienced having the most reason to need.

Q. Let's talk about the August 9, 1974 transition between the Nixon and Ford administrations as it pertained to the NSC. When you learned of President Nixon's resignation, what action did you take or to your knowledge did any member of the NSC staff take concerning the deposition of any of the [51] files maintained by the NSC? A. At the moment we learned of the resignation, we took, to my knowledge, no specific action at that time. Although there were discussions among those of us who have responsibility in this area as to how we should be thinking about the future and how we should proceed in the future, there was no specific action taken.

The instructions on the separation of the files came to us later. I cannot recall who actually signed the memorandum at the White House. It was a general instruction to separate, to be sure that there was no comingling of the period of President Nixon's administration and the period of President Ford's administration and to separate these things and to remove them and segregate them.

It was on the basis of those instructions that we began the process of segregating and boxing the material of the Nixon administration.

MR. MORTENSON: I would like marked for identification Plaintiff's Exhibit 5, a memorandum – a document labeled August 9, 1974, memorandum for the White House staff.

(The document referred to was marked Plaintiff's Exhibit Number 5 for identification.)

[52] MR. MORTENSON: For counsel's information, the Plaintiff's Exhibit 5 is a copy of a Jerry Jones memorandum to members of the White House staff which I believe all counsel have had copies of in the past.

MR. ANDERSON: When you asked for Mrs. Davis' deposition, you indicated that your questioning would take about 45 minutes and furthermore, it had been my assumption that it was related to her affidavit which is the only basis on which she should be questioned in this proceeding.

It seems to me you are going far afield of that and that Mrs. Davis is a very busy person. I would ask that you stick to the affidavit.

MR. MORTENSON: Counsel, I do intend to stick to the affidavit and I am appreciative of Mrs. Davis' very busy schedule and the responsibilities that she carries. I appreciate her being here tody. The basis for the introduction or the use of this memorandum is that Mrs. Davis' affidavit states that there has been a continuing need for access to the Nixon Presidential materials in the recent past.

She has described for us the mechanism by which the materials have been segregated. She has told us that she received or that the NSC received a memorandum shortly after President Nixon resigned talking about how to segregate the [53] materials. I would like to ask Mrs. Davis whether this memorandum appears familiar to her

as perhaps the memorandum which she received which described the packaging of the Nixon materials.

THE WITNESS: I am familiar with this memorandum. It is my recollection that this was not the only memorandum that was circulated on this general subject, however. This memorandum I do recall. It was the basis on which we began the segregation of the files so there would be no intermingling of the files.

BY MR. MORTENSON:

Q. In the process of your segregating, did the NSC staff make copies of any of the materials that were being segregated? A. Yes. As I have indicated, we made copies of certain materials primarily in these four substantive categories that I have indicated in my affidavit. We may have made copies of other material. I cannot say this for sure, although I know that we did locate copies of some of the material later on.

I believe there were copies that we had already had available. I don't think we made any copies of that material. We then subsequently transferred those copies into the valut so as to be in compliance with the order.

Q. In recalling the Jerry Jones memorandum of August 9, [54] 1974, are you familiar with the fact that it states "of course, some Nixon administration files may be needed for future reference. These files should be duplicated and placed with all other papers accumulated after noon today which constitute a new set of files for President Ford." A. Yes. It was under that provision that we did what copying we did.

Q. Is it fair to say then that at the time President Nixon resigned and then shortly thereafter when the staff received instructions to begin segregating the Nixon materials, that members of the NSC staff made a judgment concerning their future needs of NSC related materials which would otherwise be packaged among the Nixon

materials and made copies of those for their future use. A. I am sorry. Could you read that again, please?

(The record was read by the Reporter.)

THE WITNESS: It is fair to say that judgments could have been made as to what material we might continue to need. I can't say whether there was – these documents were copied at that time or whether existing copies of the documents possibly maintained in working files were retained.

I can't say whether this negated a copying of ali those documents at that time. I would rather doubt it. I would think [55] that in some cases copies might have been kept in individual working files.

Q. In any event the staff members of the NSC were under instructions to make copies or retain copies of what they felt for future reference. A. I would not say that would extend to the individual members of the staff. We try very hard to keep to an absolute minimum individual files of documents. We encourage and with some success, that individual officers keep the absolute minimum of working files and that they rely on the material in the secretariat so that we would not encourage our own staff members to duplicate copies of materials that were already available in the secretariat.

As I say, in these four examples I have given, these have been issues that have involved Mr. Kissinger and which involved President Nixon and now involve President Ford directly. This material is kept in the White House primarily for his use.

Q. Well then, is it fair to say that the NSC was under instructions along with the rest of the White House staff at the conclusion of the Nixon administration to retain copies of things which they felt would be necessary for future reference? [56] A. To the extent of that paragraph there, yes.

MR. KRULWICH: Do you have any idea how much

longer you are going to be?

MR. MORTENSON: I would say another 45 minutes.

MR. ANDERSON: You indicated to me last night that your direct examination would take 45 minutes.

MR. MORTENSON: My estimate which I gave to you yesterday morning again was based on having read the affidavit which you provided us the previous day. It was based upon solely my judgment of what was contained in the affidavit and the basis for challenging that. Since that time through discussions with various people, there are additional bases for challenging this affidavit.

I think that there has been no repetition throughout this questioning so far and that none of the areas that I intend to get into in the future, all of which are related to this affidavit, will repeat what I have gone through to this point.

It is very vital to the arguments in this case to establish the credibility and the substance of the Davis affidavit. I believe that I have the right to probe into these in this deposition. This is the only deposition that we have requested of any of party witnesses.

[57] MR. GOLDBLOOM: Off the record.

(Discussion off the record.)

BY MR. MORTENSON:

Q. Mrs. Davis, have any of the documents contained among the Nixon Presidential NSC materials been produced to any person under the Freedom of Information Act? A. No.

Q. In paragraph 8 of your affidavit you state in the second sentence "succeeding presidents, their staffs and NSC staff acting on their behalf, are able to have access to these foreign policy statements of previous administrations through the various presidential libraries which have been established after the President has left office.

During President Nixon's term, as in other administra-

tions, the NSC staff had occasion to use the non-institutional policy documents of previous administrations.

Is that statement based upon the information reflected in Plaintiff's Exhibits 3 and 4?

A. Yes. These are specific examples of occasions where we have had need to go to the Presidential libraries.

Q. Is that the basis for your statement in paragraph 8 that I just quoted? A. Yes. I should say, however, that we did not identify [58] in this particular document the specific titles of material reflected in these statistics. Generally it is the basis for that statement.

Q. From the exhibits 3 and 4, can you describe in general terms the nature of the access reflected in those documents? A. In some cases I can, yes. Let's take item number 2. The Murphy Commission for studying the organization of the executive branch asked for the preparation of several case studies. One of the researchers who was requested to prepare a case study was Richard Neustadt. He was asked by the Murphy Commission to review a report which he, Mr. Neustadt, had prepared for President Kennedy on a particular foreign policy issue, the title of the report was "Skybolt and Nassau."

The document was classified. There were no copies that we could locate anywhere in our own material. We were asked by the Murphy Commission and by Mr. Neustadt to see if this material could be declassified to the extent that it could be used in this case study.

We did obtain a copy from the Kennedy Library. We did review it and again made a determination then at that time that it could not be so declassified.

We received subsequent requests from Mr. Neustadt under the Freedom of Information Act for the declassification and [59] release of the study. We subsequently reviewed the document again and agreed to the declassification of portions of the document, but not all.

We released an excised version of the report to Mr. Neustadt.

Q. Did you handle contacts with the Kennedy Library in order to regain possession of that document? A. I personally did not.

Q. Do you know who did? A. It was done by – I don't know the individual. It done by the document control section of the NSC secretariat.

Q. Was that document under any other restrictions other than security classifications? A. I do not know the terms of the access at the Kennedy Library other than the security classification.

Q. Can you describe the purpose for any of the other accesses listed on Plaintiff's Exhibit 3? A. I think the third, the document identified in item number 3 – and I must say that on security grounds I cannot go into the specific nature of the study – but it was a document which was requested both by the Murphy Commission and subsequently by the Rockefeller Commission.

We again were not able to locate a copy in our own material [60] and we went to the Kennedy Library to obtain a copy of the material.

The ultimate disposition of that particular report, I am not familiar with since much of the Rockefeller Commission material was handled in other places. I am not familiar with the ultimate disposition but I do not – we obtained a copy from the Kennedy Library.

The fourth items relate to the State Department publication called Foreign Relations of the United States.

This is a series of historical volumes which contain the official history of U.S. foreign relations. They contain both a narrative and a text of basic source material documents.

The preparation of these volumes runs several years behind obviously. Over the past roughly five or six years the State Department historians have been working on

the volumes since 1947 and subsequent years. In other words, the volumes for the years after the creation of the National Security Council in 1947.

So for the first time the – some of the NSC material and some of the related presidential material has been requested for publication in these foreign relations volumes. This is the reason for this particular entry. When we have been requested to review certain materials, either NSC or Presidential [61] for publication in those volumes, we have had to go to libraries to obtain copies.

Q. Is what you are testifying to that the Library in connection with the request for making available such documents has requested NSC staff members to come down and review for declassification purposes? A. This is not the Library's requesting it. In item 4, it is the historians in the State Department who are requesting us to review the material for possible declassification and publication.

The items in item 5 are requests which have been received by the Presidential Libraries from scholars, what have you, for material that is in the libraries. These requests have then been referred to us by the archives for us to review the material.

Q. Do you know whether any access listed on Plaintiff's Exhibit 3 involved access to materials under restrictions as to access other than security classifications? A. I do not know.

Q. In paragraph 3 of your affidavit, you state "in 1969 President Nixon revitalized the machinery of the NSC and President Ford has affirmed a commitment to maintain the NSC as the formal structure for foreign policy decision making."

[62] Is it fair to characterize the NSC's functions under President Nixon as more extensive in the foreign policy making field than that of his predecessors, Mr. Kennedy and Mr. Johnson?

A. It is the use of the NSC institutional mechanism was much greater under President Nixon than it was under President Johnson.

Q. Has that resulted in a larger volume of institutional materials being generated during the Nixon period? A. Yes.

Q. Would that then reflect that in the institutional file there would be a larger number of national security study memoranda and national security decision memoranda than the period relating to the Johnson and Kennedy? A. The National Security study memoranda and decision memoranda are exclusively properties of the NSC system since 1969. There are more of these documents in the institutional files for the Nixon period than there were of the comparable documents during the preceding administrations, yes.

Q. Because of the Nixon revitalization of the NSC formal foreign policy machinery, is it fair to state that presently in the NSC institutional files, there is a more complete record of NSC foreign policy making during his administration than what is presently available to you under [63] the Johnson and Kennedy administrations? A. There is a more complete record in the institutional material for the Nixon years because more of the larger foreign policy questions were considered through the NSC mechanism, yes. That is correct.

Q. Do you know whether Dr. Kissinger had a copy in his own files of the correspondence between President Nixon and President Thieu of South Vietnam? A. I do not know. If I may just refer, however, to this item in the log of access for April 4th, it appears that there was an entry into the vault for the purpose of identifying or retrieving some of this Presidential correspondence on Vietnam.

I do not know of my own personal knowledge whether Mr. Kissinger has had copies of that material. I know

now, however, that copies of those exchanges are maintained in one of the safes in the west basement in Mr. Kissinger's office, in the west basement in the White House in connection with this material that I have described here in paragraph 13.

Q. How do you know that that is the case now? A. I had occasion – I do not know it is the case as of this moment. Approximately a month ago, possibly six weeks ago, I had occasion to go over and look at some material from [64] that file and I personally saw at that time copies of this.

Q. This is in Kissinger's own file? A. In the – yes, the safes which contain this material that is maintained for Mr. Kissinger in the west basement of the White House, copies of some of this material which I have described, –

Q. You don't know whether he had that copied from August 9, 1974 or not? A. I do not.

Q. Can you explain for the record what MEMCONS are? A. MEMCON is an abbreviation for Memorandum of Conversation.

Q. Where are those stored? A. Depending on their nature, they can be stored in the Presidential files maintained by the NSC in the west basement of the White House. Others may be stored in some of these safes which I described here, as Mr. Kissinger's material. Certain others, now that Mr. Kissinger is Secretary of State, certain other memoranda of conversations would be stored in the State Department.

Q. If you received a MEMCON of – strike that. If you received a MEMCON of a discussion in which President Ford and Dr. Kissinger participated who would make the [65] decision on where that document ought to be filed? A. It would depend on the nature of the discussion. If it were a particularly sensitive discussion, the decision would probably be made by Mr. Kissinger or by General Scowcroft. If it were a discussion which was somewhat less sensitive, I might make the decision.

Q. And what criteria would you use in determining whether to put it among the Presidential NSC files or the institutional NSC files? A. I can't imagine any case where we would put a memorandum of a presidential conversation in the institutional NSC files. They would always go into the Presidential files.

Q. Why is that? A. Because they are not institutional business. Our institutional files relate specifically to those issues which have come through the NSC mechanism which have been considered in the NSC or in a subgroup of the NSC or have otherwise been related directly to the institution of the national security program.

We do not consider presidential meetings with foreign leaders as the institutional business of the National Security Council.

Q. What about Dr. Kissinger's meetings with members of [66] other governments?

Where would that be found?

A. That would be found in the Presidential material rather than institutional material.

Q. Would Dr. Kissinger have a copy of that in his own files, do you know?

MR. GOLDBLOOM: I would like clarification of that question. There is an assumption that there is a distinction between presidential files and his own files for purposes of that question. If there is no distinction, I think it ought to be clarified.

BY MR. MORTENSON:

Q. Does Dr. Kissinger maintain his own files separate from the institutional files and the presidential files maintained by the NSC? A. In certain areas, I believe he does. I am not personally involved in any of the personal files that might be maintained by his own immediate people.

Q. If Dr. Kissinger had a MEMCON prepared of a meeting he had with a member of a foreign government

or if he received a copy of a MEMCON prepared of a meeting of – with President Ford or previously President Nixon, you would not know whether he maintained a copy of that in his own files? [67] A. I would not know – in his own files as distinct from a presidential file?

Q. Yes. A. I do not know.

Q. Do you know where you would find a memorandum reflecting – a MEMCON reflecting troop offset discussions? A. MEMCON with whom?

Q. A MEMCON between an assistant to Dr. Kissinger and a member of a foreign government. A. It would probably be filed in the presidential files. I cannot imagine an instance where it would be filed in institutional files.

Q. If a decision were made during the course of a conversation, where would that decision or agreement or understanding be located? A. If the decision were made in the form of a national security decision memorandum, it would be located in the institutional files since it would be a formal NSC document. If it were maintained – if the decision were reflected in a document other than a national security decision memorandum or a comparable official institutional NSC paper, it would be maintained in the presidential files.

Q. On President Ford's trip to Europe on which he is [68] presently abroad if there is an issued statement of principles, where would that be found? A. You mean a public statement?

Q. A public statement of principles. A. It would probably be filed in the White House central files which is a repository for unclassified material or public declarations. If it were an unclassified document, it would probably be found in the White House Central files. Now in addition I am sure that we would maintain convenience copies in our own location of an unclassified document.

Q. In your institutional files? A. Probably, yes.

Q. What about a communique that was issued? A. A public document?

Q. A public communique? A. It would not be maintained in NSC institutional files.

Q. What if the agreement reached was not reflected in a public document? A. It would be maintained in the institutional NSC files. It would be maintained in the presidential files.

Q. Where would you file a Nixon to Kissinger or a Kissinger to Nixon memo discussing proposals for the first [69] visit to China by Kissinger? A. Because of its extreme sensitivity, I would expect that – let me go back. It would certainly not be found in the institutional files. It would be filed in the presidential files. It would obviously in the early days have had some special protection because of its sensitivity.

But it would be filed in the presidential files as opposed to the NSC institutional files.

Q. Would it be filed anyplace else? A. Not that I know of.

Q. If President Ford enters into an understanding of any nature with a leader of a foreign state while he is abroad, will members of the NSC staff be made aware of that? A. Do you mean any member of the NSC staff?

Q. Yes. A. It is hard to say. I would assume that the substantive officer on the NSC staff who is dealing with the particular area of responsibility would be aware of any agreements or arrangements that have been reached on the trip, yes.

Q. Is that a senior staff position when you refer to a substantive officer? A. Yes.

[70] Q. Would he maintain a file of his own?

MR. ANDERSON: I am going to object to this to the extent that it does not have to do with the Nixon Presidential materials which are the subject of this suit.

MR. MORTENSON: We are trying to establish the mechanism for filing between presidential and institutional which is the subject of the affidavit submitted by the government defendants.

MR. GOLDBLOOM: I think you ought to add to that. When you say – that question needs to be clarified because it is not clear whether you are claiming that particular file when you say he maintains a file of his own if such a senior staff officer of the NSC maintained a working file in his office comparable to the type of information that you just proposed to the witness.

I think it ought to be clear what your position is with respect to what you claim in this litigation as far as presidential materials are concerned?

MR. MORTENSON: Our position would be that to the extent it is not an institutional document of the NSC, that it would be the subject of this litigation. The relevance of the question is that if a staff member maintained that in his files and had it there at the time the administration [71] changed, according to Mrs. Davis' testimony, the NSC received the Jerry Jones memorandum saying that copies should be maintained of things that they thought they would need for future reference.

My question is would a staff member have mong his working files or otherwise a copy of such an understanding?

THE WITNESS: It is possible that a senior staff member who had participated in either the preparations for a presidential trip or had actually accompanied the president on the trip would retain in his working files copies of some of the material that had been generated from the trip.

If I may I would like to return to a statement I made earlier, that as a practice, we discourage individual staff members from maintaining –duplicate, extensive duplicate files in their own offices.

Q. In describing your responsibilities in your affidavit, you state "My responsibilities include the review of the work of NSC staff members for responsiveness to the requirements of the president and his assistant for national security affairs, including organization, presentation, format and proper coordination."

In carrying out that function, do you perform any substantive [72] review of the materials?

MR. ANDERSON: What do you mean by substantive and –

BY MR. MORTENSON:

Q. Do you edit or make suggestions as to changes of statements that are contained in there? A. To the extent that the statements require clarification or that I believe the document should be – I believe a particular statement in it should be possibly reviewed by another officer on the staff, to that extent, I edit and may suggest changes.

I do not – I would not challenge a substantive judgment reflected in such a document by one of the senior substantive officers.

Q. Do you make any substantive judgments as to what should be included? A. I may. I again may go back to an officer and suggest the includsion of additional material, possibly additional supporting documents to be added.

Q. You state in paragraph 1 "I also serve as the principal point of contact on NSC matters for officers of the NSC members and other executive departments."

What is entailed in that?

[73] A. My office is the central source of information for the NSC members and other departments on the status of issues going through the NSC system. On the scheduling of meetings, the distribution of documents for such meetings, in addition to the institutional business, I also am the principal point of contact for such people as

the executive secretary of the Department of State on all issues both institutional and non-institutional in which the NSC staff and the office of the Secretary of State have reason to communicate.

In other words on documents which the State Department has sent us for, documents which we have sent the State Department and asked them to prepare responses, that sort of thing. My office is the central point of contact for that.

Q. Is it important for the NSC staff to have a knowledge of what occurs at cabinet meetings? A. Only to the extent that they relate to foreign policy matters.

Q. Are you aware that President Johnson recorded certain of his cabinet meetings?

MR. ANDERSON: I object to this line of questioning. It is totally irrelevant to this affidavit.

MR. SKANCKE: You represented that your deposition was going to take 45 minutes. I presume that you are going [74] to be able to stick to the ending time of 12:15 particularly in view of the utter irrelevance of the last thirty minutes.

MR. MORTENSON: I will consider that a time I would like to try to meet. I do not consider the questioning irrelevant, also.

BY MR. MORTENSON:

Q. Has there been any occasion during your tenure on the NSC staff for any staff member or any member of the administration to request access to tape recordings contained in the Johnson Library?

MR. ANDERSON: Didn't the witness testify that she didn't know about those?

MR. MORTENSON: She said he was not aware he recorded cabinet meetings.

THE WITNESS: Could you repeat the last question, please?

(The record was read by the Reporter.)

THE WITNESS: Not that I know of.

BY MR. MORTENSON:

Q. Has there been any cocasion to date to your knowledge for any members of the NSC staff or Dr. Kissinger or otherwise to have access to the tape recordings of the Nixon administration? [75] A. Not that I know of.

Q. You have stated that you prepared this affidavit in connection with discussions with Mr. Skancke and Mr. Murphy. What discussions did you have or knowledge specifically, specific knowledge, did you have in formulating the statement in paragraph 10 — I am sorry, paragraph 11. Without the ability to review our past understanding with the Chinese as reflected in these documents, the presidents would be inadequately prepared for his forthcoming meetings with the PRC officials. A. You are asking on what I based that statement?

Q. Yes. A. My own judgment.

Q. Is that also true with respect to paragraph 12 where you state "without ready access to the Nixon Administration materials, of which the basic negotiating papers are a part, our effectiveness would be seriously diminished." A. That statement was also made on the basis of my own judgment. As I mentioned earlier this affidavit was reviewed by General Scowcroft, Mr. Kissinger's deputy.

Q. You made the statement in paragraph 15, "indeed, we have retained copies of a limited number of those documents most often required in the White House office of the [76] President. Do you know how many copies have been — have — documents have been copied? A. I don't know the precise number, no.

Q. Do you have a general understanding of the number? A. We estimate that it would be about 25 file boxes. I should point out that some of this material is in briefing books. In other words, there will be a briefing book pre-

pared for a particular trip or occasion, so it would be a bulky document.

Q. When you describe the 25 file boxes, you demonstrated with your hands a box approximately how deep? A. The material is maintained in safes. The estimate for the rule, if I may use the word, is that each safe drawer, the contents of each full safe drawer may be filed in some standard cardboard file boxes which are two per drawer.

The boxes are I would say –

MR. GOLDBLOOM: I believe they are one cubic foot. The estimate is that one full safe drawer requires two of these boxes of material. The material that we are talking about is contained in about 3 safes plus 1 drawer, possibly 3 and a half safes.

We use the description of the boxes because the material that we had put into the vault we had also described [77] in terms of the number of boxes. So we use the box definition to be consistent.

Q. We are talking about on an estimated basis of 25 cubic feet of materials that have been copied? A. Approximately.

Q. Approximately how many boxes are there of Nixon Presidential materials in the NSC vault? A. We have moved over 352 boxes of presidential documents to the vault.

Q. Do you know how many of those contain copies of part of this that was returned to the vault? A. I don't know specifically.

MR. MORTENSON: No further questions.

MR. GOLDBLOOM: Can we take a two minute break?

MR. MORTENSON: Fine.

(Brief recess.)

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. In paragraph 2 of your affidavit the first sentence the statutory function of the NSC is to advise the president with respect to the integration of domestic, foreign and military policies relating to the national security.

From the sketchy descriptions of documents in the [78] log which has been marked as Plaintiff's Exhibit 2, can you tell whether those documents would have related to those functions of the National Security Council? A. Not specifically, no.

Q. In a general way? A. In a general way, I can relate some of them to these functions, yes.

Q. Would they relate generally to the subject mattter of paragraphs 11 through 14 of your affidavit? A. Some of them would.

Q. Well – A. Specifically illustratively the item on page 4 July 10, 1975, box number 2 of the China material, this would relate to one of those paragraphs.

– Q. Would the log reflect access to Nixon Administration materials of copies which were not kept in the vault but were kept by the NSC staff for use ona more regular basis? A. No. This log pertains only to access to material in the vault.

Q. Was – strike that.

So that not all material used on a regular basis would be reflected in this log?

A. No. The material of which we have copies which are [79] maintained in the est basement of the White House, access to those copies would not be reflected in this log.

Q. At the time of Mr. Nixon's resignation was the National Security Council in a position to anticipate all of its future needs for his presidential materials? A. No.

Q. Can you tell us the position you held before you

became staff secretary of the National Security Council on June, 1970. A. From March 1969 to June 1970 I was detailed to the NSC staff from the Department of State to organize and head a new NSC secretariat. I became staff secretary in June of 1970 on the departure of the officer who had been staff secretary.

Prior to March, 1969, I was an employee of the Department of State and I still am an official employee of the Department of State. I am detailed.

Q. When did you begin your employment with the Department of State? A. In 1946. My entire career in the State Department has been in the executive secretariat of the Department of State. I have held several positions starting with a very junior professional position. At the time I was detailed to the [80] NSC staff I was the Director of the Secretariat staff which is a group of foreign service officers who perform review and general staff functions for the secretary and the deputy secretary of state.

I was the Director of that staff.

MR. ANDERSON: I have no further questions.

BY MR. DOBROVIR:

Q. Mrs. Davis, as staff secretary, it is part of your duties to keep yourself informed generally as to the work of the National Security Council? A. Yes.

Q. And you do so keep yourself informed, isn't that right? A. Yes.

Q. So is it fair to say that the judgments which are made by you and which are stated in paragraphs 11 and 12 about Mr. Mortenson asked you are based upon that knowledge and that experience? A. They are.

MR. DOBROVIR: No further questions.

BY MR. KRULWICH:

Q. In connection with Exhibit 2 on page 2 there are

four references beginning April 4th, through April 9th, 1975. [81] Do these references all relate to Vietnam? A. Yes, they do.

MR. KRULWICH: Thank you. That is all.

REDIRECT EXAMINATION

BY MR. MORTENSON:

Q. At one point you referred to a term I believe it was substantitve officers. Who are substantive officers in the NSC staff? A. We have what we call – excuse me. I will have to go into a little bit of the organization of the staff in order to explain this. Is that what you want?

Q. Maybe I can narrow my question. A. All right.

Q. How many substantive officers are there? A. Approximately 35.

Q. Are these people assigned to work on specific problems that arise in the course of the NSC activities? A. They are assigned to work in specific areas both on the work, the institutional work of the NSC and also the non-institutional work of the staff since the NSC staff supports both the institutional acivity and the non-institutional activity of Mr. Kissinger.

Q. Is the staff secreatary position a substantive [82] officer position? A. That is hard to say.

Q. Or is it an administrative officer position? A. that is hard to say. The work of the staff secretary requires substantive knowledge and a substantive background. The work itself to the extent that the staff secretary influences substance, the work is administrative. But it requires a substantive background.

Q. Do you carry substantive officer assignments in any specific area of NSC wokr? A. Do I personally?

Q. Yes. A. It depends on your definition of substantive. I am the – I have the primary responsibility on the staff for such things as the review of documents for de-

classifivation, which I mentioned earlier. For example, if we had two area officers who disagreed on the possibility for declassification, th eissue would come to me initially and I would try to either resolve the differences or I would express a judgment of my own.

If necessary we might carry the issue higher and I would indeed express a substantive judgment of my own.

Q. Apart from the declassification, would you carry any substantive officer responsibility on matters dealing with [83] China. A. No.

Q. On matters dealing with Russia? A. No.

Q. Any substantive area dealing with Vietnam? A. No.

Q. Any substantive area dealing with the Middle East? A. No.

Q. You have stated, I believe, in response to questions from Mr. Anderson, that it is clear to you from your knowledge of some of the categories and materials reflected in the log, Plaintiff's Exhibit 2, that they related to national security or foreign policy matters and that access to those documents could not be gained other than through entry to the vault, that thosy documents were not contained elsewhere? A. Excuse me. I do not know whether those documents were not filed elsewhere. I am assuming the fact that they entered the vault in order to obtain them, I am assuming they are not available elsewhere. I do not know of my own personal knowledge they are not available elsewhere.

MR. MORTENSON: I have no further questions.

RECROSS-EXAMINATION

BY MR. GOLDBLOOM:

[84] Q. I think you testified that you examined NSC documents for classification review, is that correct? A. For review for the purposes of declassification and publication, yes.

Q. Is it your responsibility to make judgments concerning the declassification of documents? A. It is not exclusively my judgment. We distribute the documents in question to various individuals on the staff depending on the area of concern. They provide me with their comments. If there is unanimity among the staff officers, I would under normal circumstances accept their judgment. If there is a difference of opinion between officers, I might discuss it with them, possibly try to work out an arrangement between the two, maybe come to some understanding.

If the difficulty persists, the difficulty persists, I would then probably prepare a memorandum to General Scowcroft or Mr. Kissinger outlining the differences, expressing the judgments of the other officers and expressing my own judgment.

Q. You would have an area where you would be exercising your own judgment. A. I would be expressing my own judgment, yes.

Q. What are the criteria – are there any formal criteria concerning the declassification of documents or materials? [85] A. Yes, the formal criteria derive more from the exceptions which are laid out in Executive Order 11652 and the Freedom of Information Act.

Q. Does that Executive Order contain information of impact on documents concerning the declassification? A. In the exceptions, yes.

Q. In exercising your judgement regarding declassification of documents, you would have to be making judgements in the area of national security and foreign affairs of the United States? A. Yes.

Q. To whom do you report in your position? A. I report directly to Mr. Kissinger or his deputy General Scowcroft.

Q. In the average or normal course of business, would you say – how often would you personally deal with

either Mr. Kissinger or General Scocroft? A. I would deal personally with General Scowcroft at least once a day. I would deal personally with Mr. Kissinger very infrequently, particularly now since he is also Secretary of State and divides his time between two posts.

I would have contact with him primarily in connection with attendance, my attendance at meetings of various NSC [86] subgroups which Mr. Kissinger chairs.

I attend many of those meetings.

Q. You have rady access to Mr. Kissinger when you need him? A. If I should need him, yes.

MR. GOLDBLOOM: I have no further questions.

REDIRECT EXAMINATION

BY MR. MORTENSON:

Q. You have described the declassification process and you have described to us if two staff members agreed on a matter of declassification, I would accept that and eeclassify the document? A. In almost every case, yes.

Q. If you disagree, you then would prepare a memorandum? A. It would depend. The Freedom of Information Act process requires two separate independent determinations. It requires an initial determination by one individual and it requires another individual to make the determination on the basis of an appeal.

So that in the – I am the person on the NSC staff responsible for the initial determination on a Freedom of Information request. In that case, if there were a split on the staff, I would be the one to sign the letter, whatever, [87] either agreeing or denying the request. On the appeal – excuse me. On Executive Order 11652 requests, which do not involve specifically the Freedom of Information Act, there is not this two-level distinction.

So in those cases, if there were questions, if there was

disagreement, at that point I might well refer them to higher authority. I would not, however, refer additional – an initial denial or granting of a Freedom of Information Act request to higher authority because that is required to be kept completely separate.

Q. If a Freedom of Information request were filed for a copy of the correspondence between President Nixon and President Thieu and it were referred to two staff officers dealing with Vietnam, if they disagreed as to the impact of that release upon relationships with South Vietnam or any other foreign country, how would you handle that dispute? A. Well first of all a request, a Freedom of Information request, for correspondence between President Nixon and President Thieu, we could not consider because under the terms of the court order, we would not have access to that material except for the conduct of ongoing business.

We have not interpreted responding to a Freedom of Information request as falling within that category.

[88] We would not have occasion to consider it.

Q. Let me put the same question in the context of a letter between Presidents Ford and Mr. Breshnev. If a Freedom of Information Act request sought access to such a letter and it was referred to staff officers dealing with matters involving Russia and they came back with disagreement on the impact, how would you handle that? A. Depending on the individual letter in question, it would be my inclination – and this is a little – I would have to know the specific letter, the contents of the letter. In any exchange of correspondence at the highest level, I would tend, I believe, to be more cautious about the release than I would on another less sensitive or less high level document.

Q. Does that mean you would refer it to someone? A. Not a Freedom of Information request unless it were a document which involved another agency. That would

not be the case of a presidential letter. But if the request should be for a document, for example, which had intelligence content, I might well refer it to another agency for expression of their view.

But not of a presidential letter, not in the initial stages.

Q. You described for us your contact with General [89] Scowcroft and Dr. Kissinger. What types of matters would you take up with General Scowcroft? A. Almost anything in my own range of responsibilities.

Q. Would you discuss with General Scowcroft the policies to be advanced in relationships with China? A. No.

Q. Would you discuss with General Scowcroft or Dr. Kissinger the policies to be advanced in the SALT negotiations and positions the United States should take vis-a-vis the Soviet Union?

MR. SKANCKE: We will stipulate that Mrs. Davis is not the Secretary of State.

MR. MORTENSON: I did not ask for that stipulation. The focus of my question – and I think they are quite obvious to counsel for the Intervenors – is to find out the range of Mrs. Davis' responsibilities.

BY MR. MORTENSON:

Q. Would you discuss with either General Scowcroft or Dr. Kissinger the policies to be followed or not followed with regard to Vietnam? A. No.

MR. MORTENSON: No further questions.

MR. GOLDBLOOM: We have none.

[90] (Whereupon at 12:40 p.m., the taking of the Deposition of JEANNE DAVIS was concluded.)